

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.39486 of 2010

Arising Out of PS.Case No. -0 Year- null Thana -null District- GOPALGANJ

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1. Madhubala Sinha @ Renu Devi daughter of late Gagandeo Prasad Sinha divorced wife of Sudhir Kumar Shrivastava
 2. Harihar Nath Sinha son of late Bishundeo Prasad Sinha, both residents of village Hanuman Garhi, P.O. & P.S. & District Gopalganj

.... Petitioner/s

Versus

1. The State of Bihar
2. Sudhir Kumar Shrivastava son of Awadh Kishore Shrivastava, resident of village Sakhe Khas, P.S. Uchakagaon, District Gopalganj

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Mahesh Narayan Parbat, Advocate

For the Opposite Party/s : Mr. C.B. Prasad, APP

For Opposite Party No.2 : Mr. Ram Chandra, Advocate

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CORAM: HONOURABLE JUSTICE SMT. ANJANA PRAKASH

ORAL JUDGMENT

Date: 23-02-2016

The Petitioners seek quashing of the order of cognizance dated 4.3.2010 passed by the court of Sri M.K. Shrivastava, Judicial Magistrate, Gopalganj in Complaint case No.2541 of 2009 (Trial No.1066 of 2010).

The case of the Complainant is that he was married to Petitioner No.1 on 2.7.2002 and was initially living a happy life but subsequently some dispute arose, on account of which she returned to her maternal home and did not return. The Complainant then filed M.M. case No.321 of 2006 under Section 9 of the Hindu Marriage Act in which an adverse order was passed against him and he was directed to pay Rs.1,75,000/- as permanent alimony and Rs.9400/- as litigation



cost. Subsequently Petitioner No.1 filed an application under Section 125 Cr.P.C. for maintenance, in which a positive order was passed and she also filed a Divorce case bearing Case No.10 of 2008 and got a decree of divorce on payment of Rs.2 lacs. The Petitioner No.1 had also instituted a case under Section 498A I.P.C. which was found to be false, but the case proceeded on protest petition. The further grievance of the Complainant was that even though he had paid a sum of Rs.4,18,800/- to the Petitioner No.1 on 3.12.2008 in presence of Petitioner No.2 but subsequently she raised an objection that no money had been paid to her. On the date of occurrence the Complainant went to the house of the Petitioners and asked them to return his money but instead they abused and assaulted him.

It has been submitted on behalf of the Petitioners that evidently in the background dispute the present Complaint is malicious and deserves to be set aside. In fact the Complainant has always been acting in a highhanded manner even with the Court and hence the Complaint Petition should be dismissed.

On the other hand, the Counsel for the Complainant submits that since the Petitioners are lingering the dispute and purposely taking steps so as to prolong it, they should be put on trial.

Having considered the factual nature of the allegations and the background dispute, I would be of the opinion that the present

proceeding is a gross abuse of the process of the court and deserves to be set aside. Hence, the application is allowed and the proceeding including the order of cognizance dated 4.3.2010 passed by the court of Sri M.K. Shrivastava, Judicial Magistrate, Gopalganj in Complaint case No.2541 of 2009 (Trial No.1066 of 2010) is hereby set aside.

It is expected that the parties who have parted ways will now restrain themselves from any further mischief.

(Anjana Prakash, J)

Narendra/-

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