

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.5304 of 2014

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Avinash Kumar Sagar S/O Sunil Prasad Resident Of Village Lohra, P.S.
Harnaut, District Nalanda.

.... Petitioner

Versus

1. The State Of Bihar.
2. Guriya Kumari D/O Late Ishwary Prasad Resident Of Village Meghi,
P.S. Deep Nagar, District Nalanda.

.... Opposite Parties

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Appearance :

For the Petitioner	:	Mr. Mukesh Kumar, Advocate Mr. Dhananjay Kumar, Advocate
For the Opposite Parties	:	Mr. Birendra Kumar Singh, Advocate Mrs. Archana Mishra, Advocate.
For the State	:	Mr. Jharkhandi Upadhyaya, APP.

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**CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR
SINGH**
ORAL ORDER

3 15-11-2016 Heard learned counsel for the petitioner, learned

counsel for the State and learned counsel for the Opposite Party

No.2.

This application under Section 482 of the Code of Criminal Procedure has been filed for quashing of the order dated 2nd July, 2013 passed by the learned Judicial Magistrate, Ist Class, Nalanda in Complaint Case No.1424C of 2011 by which he has summoned the petitioner after taking cognizance of the offence punishable under Section 498A of the Indian Penal Code.

The complainant has alleged in the complaint that she was married to the petitioner two years ago at Rajgir. At the time



of marriage, her father had given sufficient cash, ornaments and other gifts to the petitioner. After marriage, she went to her Sasural where she was tortured by the petitioner and her in-laws. Her father brought her back to her Naiher after eleven days of marriage where she disclosed about the ill-treatment she faced at her Sasural. When the father of the complainant tried to pacify the matter, the accused persons demanded Rs.1,00000/- from him and when he expressed his inability to fulfill the demand, the accused persons including the petitioner misbehaved with him. When her father took her to her matrimonial house, the accused persons ill-treated her in various ways and ultimately on 20th of June, 2011, she was driven out her matrimonial home.

The statement of the complainant was taken on oath under Section 200 of the Code of Criminal Procedure. In support of the complaint, two enquiry witnesses were also examined. After perusing the allegations made in the complaint and appreciating the statements of the witnesses and the complainant taken during enquiry, the learned Magistrate summoned the petitioner only for the offence punishable under section 498A of the IPC vide order dated 2nd July, 2013. The aforesaid order dated 2nd July, 2013 has been assailed in the present application.

It is submitted by learned counsel for the petitioner that

the instant complaint is a gross abuse of the process of the Court. He has contended that prior to the institution of the present complaint, the complainant had made oral statement before the police pursuant to which Harnaut P.S.Case No.08 of 2012 dated 11.01.2012 was instituted against the petitioner and others for the offences punishable under Sections 376/34 and 120B of the Indian Penal Code.

In the said First Information Report(for short 'FIR'), she had stated that about a year ago, she had gone to the Sasural of her sister, namely, Dharmshila Devi where she met with the petitioner. He repeatedly insisted to marry her. The parents of the petitioner also persuaded her to marry the petitioner. On the assurance given by them, she started talking to the petitioner and taking advantage of the situation on the pretext of marriage, the petitioner established physical relationship with her as a result of which she conceived.

It has been contended that once the informant had instituted a criminal case against the petitioner under Section 376 of the Indian Penal Code making an allegation that on false pretext of marriage, she was subjected to rape, the subsequent institution of the complaint by her under section 498A of the Indian Penal Code is an abuse of the process of the Court.

Learned counsel for the State concedes that in view of the allegations made in the FIR as contained in Annexure-2 to the present application, the instant complaint is a gross abuse of the process of the Court.

Per contra, learned counsel for the complainant has submitted that the plea taken by the petitioner is in the nature of defence which can be appreciated only during trial. The veracity of the allegation cannot be tested merely on affidavit filed on behalf of the petitioner. However, he does not dispute the institution of the FIR by the complainant against the petitioner and others.

I have heard learned counsel for the parties and perused the materials available on record. It would be evident that from perusal of Annexure-2 to the present application that Harnaut P.S.Case No.08 of 2012 was instituted on the basis of the statement made by the complainant before the police on 11th January, 2012. The said case was instituted against the petitioner and others under Section 376/34 and 120B of the Indian Penal Code wherein allegation has been made that the complainant was never married to the petitioner rather the petitioner had established physical relationship with her on the false pretext of marriage whereas the instant complaint has been instituted on 9th of

December, 2011, i.e., prior to the institution of the First Information Report. Since in a subsequent report made before the police, the complainant herself has alleged that she was never ever married to the petitioner, the allegation made in the present complaint that she was married to the petitioner about two years ago for the purpose of prosecution under Section 498A of the Indian Penal Code cannot be believed. The allegations made in the complaint and the police case by the complainant are self contradictory.

In that view of the matter, I find substance in the argument of the learned counsel for the petitioner that alleging the present complaint to continue would amount to abuse of the process of the Court. In view of the discussions made herein above, the impugned order dated 2nd of July, 2013 passed by the learned Judicial Magistrate, Nalanda in Complaint Case No.1424C of 2011 is false.

The application stands allowed.

(Ashwani Kumar Singh, J)

B.Kr./-

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