

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.35865 of 2014

Arising Out of PS.Case No. -127 Year- 2014 Thana -KADAMKUAN District- PATNA

- =====
1. Somesh Chandra Gupta aged 27 years Son of Birendra Kumar Gupta
 2. Birendra Kumar Gupta Son of Late Rajendra Prasad Gupta
 3. Shobha Devi Wife of Sri Birendra Kumar Gupta Resident of Bahadurpur 13/B, Thana - Bahadurpur, Rajendra Nagar, District - Patna.

.... Petitioners

Versus

1. The State of Bihar.
2. Jyoti Kumari @ puja, Wife of Sri Somesh Chandra Gupta, Mohalla Kazipur, Thana - Kadamkuan, P.O. - Bankiore, District- Patna.

.... Opposite Partys

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Appearance :

For the Petitioner/s	:	Mr. Surendra Prasad Mr. Naresh Kumar Sinha
For the O.P. No. 2	:	Mr. Mithlesh Kumar Gupta Miss Puja Sinha Mr. Uday Kumar
For the Opposite Party/s	:	Mr. Chandra Sen Prasad Singh, APP

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CORAM: HONOURABLE MR. JUSTICE SANJAY KUMAR

ORAL JUDGMENT

Date: 28-08-2017

This application under Section 482 of the Code of Criminal Procedure has been filed to quash the F.I.R. of Kadamkuan P.S. Case No. 127 of 2014 registered for the offence under Sections 323, 341, 354-A, 498-A/ 34 of the Indian Penal Code and 3 & 4 of the Dowry Prohibition Act.

2. Heard both sides.

3. The petitioners are husband and in-laws of the Opposite Party No. 2. The Opposite Party No. 2 had filed a Complaint Case No. 25063 of 2014 on the file of C.J.M., Patna alleging inter alia



that her husband and in-laws started torturing her immediately after two months of her marriage. They abused and assaulted the complainant and ousted her from their house as the demand of further dowry was not fulfilled.

4. The learned counsel for the petitioner submits that the marriage took place in the year 2009, but she has lodged the case after a delay of five years for which no explanation has been offered. The allegation of demand of dowry and torture is vague. The complainant herself left the matrimonial house and started living with Lalit Narayan Singh with whom she was in adultery as husband and wife and subsequently, she married with him in a temple and since their marriage, they are residing together. It has been further submitted that the Opposite Party No. 2 has given birth a male child from her second husband Lalit Narayan Singh on 19.09.2015. The learned counsel has referred to Annexure-12 of the supplementary affidavit, which is the birth certificate of the child born from the womb of the Opposite Party No. 2. The allegation of torture has been wrongly made in order to harass the petitioners. The learned Magistrate has not considered all these things and has passed the impugned order in mechanical manner and so, the same is fit to be quashed.

5. The learned counsel for the Opposite Party No. 2 as well



as the learned APP for the State opposed the submissions. It was submitted that matter was investigated by the Police and after cognizance, the charges have been framed and the case is pending for evidence and so, this application has become infructuous and is fit to be dismissed.

6. On perusal of complaint petition, impugned order and the documents on record, I find that there is no dispute that the petitioner No. 2 was married with the petitioner No. 3. The Opposite Party No. 2 has specifically alleged that after two months of her marriage, her husband and in-laws started torturing her. They abused to demand money and on account of non-fulfillment of the said demand, she was ousted from their house. The learned Magistrate after going through the statement of the complainant on S.A. and other witnesses found prima facie case for the offence in question and accordingly, summoned them. The assertion of the petitioners that she was living with another person in adultery since before the marriage and that she has married and from the said marriage, she has been blessed with a son cannot be taken into consideration at the stage of taking cognizance. The learned magistrate has taken cognizance on the basis of the materials, which were available on record. It further appears that a copy of the complaint case was sent to Police Station under Section 156(3) Cr.P.C. for institution of the



case and investigation. After investigation, police have submitted charge-sheet against the petitioners and the learned Magistrate after taking cognizance has entered into the trial. The charges have been framed and the evidence of the Opposite Party No. 2 has already been recorded. In this view of the matter, this application has become infructuous.

7. This application is devoid of merit and is, accordingly, dismissed.

(Sanjay Kumar, J)

ajay gupta/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	30.08.2017
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