

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.3881 of 2011

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1. Gopal Saha S/O Late Moti Saha R/O Mohalla - Barmasia, Police Station - Kaithar Town (Sahayak), District - Katihar
2. Kalawati Devi W/O Late Moti Saha R/O Mohalla - Barmasia, Police Station - Kaithar Town (Sahayak), District - Katihar
3. Shambhu Saha @ Shamabhu Nath Sah S/O Late Moti Saha R/O Mohalla - Barmasia, Police Station - Kaithar Town (Sahayak), District - Katihar

.... Petitioner/s

Versus

1. The State Of Bihar
2. Veena Saha W/O Gopal Saha R/O Mohalla - Barmasia, Police Station - Katihar Town (Sahayak), District - Katihar

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Ajay Kumar
For the O. P.No.1 State : Mr.Dashrath Mahto,(App)
For the O.P.No.2 : None.

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CORAM: HONOURABLE MR. JUSTICE RAJENDRA KUMAR MISHRA
ORAL ORDER

6 21-03-2017 Heard learned counsel for the petitioner and learned Additional Public Prosecutor O.P.No.1 the State of Bihar. None has appeared on behalf of O.P.No.2.

2. This application is directed, under Section 482 of Cr.P.C, against the order dated 09.06.2010 passed in C.A. No.2882/09 whereunder the court of the S.D.J.M., Katihar summoned the accused petitioners, on enquiry, under Section 204 Cr.P.C. finding prima facie case under Section 498(A) of the Indian Penal Code and Section 4 of Dowry Prohibition Act.

3. The fact leading to this application is that



O.P.no.2 Veena Sah filed the complaint case No.2882/09 with contentions that her marriage was performed with petitioner no.1 Gopal Sah on 28.02.2002 when she came to her matrimonial house after marriage then her mother-in-law petitioner no.2 Kalawati Devi and her husband petitioner no.1 Gopal Saha, showed grievance about non-providing proper dowry and made demand of motor cycle and cash Rs.2/- lacs and she was being tortured for same and she was removed from her matrimonial house. She came back to her matrimonial house, but her husband and mother-in-law were adamant on demand of motor cycle and cash Rs.two lacs also told that on fulfillment of demand she would be allowed to live at her matrimonial house. When she expressed inability of her mother and brother in fulfilling demand, then she was assaulted through lathi and stick. Her mother-in-law Kalawati Devi (petitioner no.2) and brother-in-law Shambhu Nath Sah (petitioner no.3) used to instigate her husband. When her brother tried to convince then he was humiliated by her husband and in-laws. She went to her maika on the death of her mother and when she returned to her matrimonial house she was not allowed by her husband and in-laws to enter in the house.

4. Learned counsel for the petitioners submits that, in fact, marriage of O.P.No.2, Veena Devi was solemnized with



petitioner no.1 and behaviour of O.P.No.2 with her husband petitioner no.1 and mother-in-law petitioner no.2 was not good and she withdrew to the society of her husband (petitioner no.1). Thereafter petitioner no.1 filed the Matrimonial Case No.197/06 under Section 13(1) (a) of Hindu Marriage Act, 1955 for dissolution of marriage against his wife O.P.No.2. Despite notice the complainant O.P.No.2 did not turn up and the aforesaid matrimonial case was decreed on 19.12.2008 ex parte by the court of Principal Judge Family Court, Katihar. After decree of divorce passed in Matrimonial Case No. 197 of 2006 the O.P.No.2 filed the complaint case No.2882/09 on 11.09.2009 to give undue pressure and also filed Misc.Appeal No.697/10 against the ex parte decree passed in Matrimonial Case No.197/06 by the Principal Judge, Family Court, Katihar before this High Court which was also dismissed due to non-compliance of the peremptory order dated 7.2.2014.

6. Annexure-4 of the petition is the copy of the ex parte Judgment dated 19.12.2008 passed in Matrimonial case No.197 of 2006 filed by the petitioner no.1 Gopal Saha against his wife complainant O.P.No.2 Veena Saha regarding the dissolution of marriage in between them. Thereafter O.P.No.2 Veena Saha filed the complaint Case No.2882 of 2009 against the petitioners



who are her husband, mother-in-law and brother –in-law in which impugned order has been passed summoning the accused petitioners finding prima facie case, on enquiry, under section 498(A) I.P.C. and 4 of Dowry Prohibition Act office note dated 6.3.3027 shows that Misc. Appeal No.697 of 2010 preferred by O.P. No.2 against the exparte Judgment of divorce passed in matrimonial case No.197 of 2006 before this Court has already been dismissed in default on 7.2.2014. As such it is apparent that Complaint Case No.2882 of 2009, in which impugned order has been passed, is filed by the O.P.No.2 against the petitioners who are her husband, mothering-law, brother-in-law in retaliation and counter blast of decree of divorce passed in Matrimonial Case No.197 of 2006 on 19.12.2008.

As such, the impugned order, dated 9.6.2010 passed in C.A.No.2882/09 filed by the O.P.No.2 summoning the accused-petitioner finding prima facie case under Section 498 (A) of I.P.C. pending in the court S.D.J.M., Katihar as well as entire proceeding is hereby quashed.

(Rajendra Kumar Mishra, J)

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