

**IN THE HIGH COURT OF JUDICATURE AT PATNA**

**Criminal Miscellaneous No.31324 of 2013**

Arising Out of Complaint Case No. -470 Year- 2012 Thana -ROHTAS COMPLAINT CASE  
District- SASARAM (ROHTAS)

- =====
1. Raju Goswami @ Raju Giri, Son Of Sri Jai Prakash Goswami @ Jai Prakash Giri
  2. Jai Prakash Goswami @ Jai Prakash Giri, son of Ramjee Goswami
  3. Smt. Geeta Devi, wife of Jai Prakash Goshwami
  4. Soni Kumari, daughter of Jai Prakash Goshwami.
- All are resident of village Baghini P.S. Mohania Distt Kaimur (Bhabua).

.... .... Petitioners

Versus

1. The State of Bihar
2. Smt Renu Devi, wife of Raju Goshwami @ Raju Giri, daughter of Sri Shyam Bihari Goshwami, resident of village Akorha P.S. Sheosagar, Distt Rohtas.

.... .... Opposite Parties

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**Appearance :**

For the Petitioners : Mr. Rama Kant Ram (Anand), Advocate.

For the State : Mr. Anand Kishore Upadhyay, A.P.P.

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**CORAM: HONOURABLE MR. JUSTICE SANJAY PRIYA**

**ORAL JUDGMENT**

**Date: 25-01-2017**

Heard learned counsel for the Petitioners and the State.

2. The Petitioners seek quashing of the order dated 17.4.2013 passed by the learned Sub Divisional Judicial Magistrate, Sasaram, in Complaint Case No. 470 of 2012 by which he has taken cognizance under Section 498(A) of the Indian Penal Code and Section 4 of Dowry Prohibition Act against the petitioners.

3. Notices were issued to the opposite party No. 2 but despite valid service of notice, she has chosen not to appear before this Court.



4. It has been submitted on behalf of the counsel for the petitioners that the learned Magistrate without appreciation of evidence has found prima facie case against the petitioners for the offences under Section 498(A) of the Indian Penal Code and Section 4 of Dowry Prohibition Act.

5. The counsel for the petitioner has submitted that prior to filing of this complaint, the marriage of the complainant with petitioner No. 1 was already dissolved by a decree of divorce passed by order dated 19<sup>th</sup> October, 2011, in Matrimonial Case No. 100 of 2010 by the Principal Judge, Family Court, Kaimur at Bhabhua. The instant case has been filed merely to harass the petitioners.

6. The learned Additional Public Prosecutor has appeared. He has submitted that no illegality has been done by the court below.

7. From perusal of the allegation made in the complaint petition and the Solemn Affirmation of the complainant, it appears that the complaint has been filed on 3.5.2012. The Solemn Affirmation of the complainant has been recorded on 31.7.2012. To court question, the complainant in paragraph-6 of her Solemn Affirmation (Annexure-2) has stated that her husband has not filed any other case against her.

8. The marriage of the complainant with the petitioner



No. 1 was already dissolved by a decree of divorce vide judgment dated 19.10.2011 passed by the Principal Judge, Family Court, Kaimur at Bhabua. The copy of aforesaid judgment has been filed as Annexure-2. It is mentioned in para 3 of aforesaid judgment that opposite party No. 2 (wife) refused to receive summons.

In such circumstances, this Court is of the view that since marriage was already dissolved by a decree of divorce prior to filing of the complaint, the continuation of Criminal Proceedings against the petitioners and other accused persons will be the abuse of process of law.

9. Hence, the entire Proceedings including the order dated 17.4.2013 passed by the learned Sub Divisional Judicial Magistrate, Sasaram, in Complaint Case No. 470 of 2012 by which he has taken cognizance against the petitioners, is hereby quashed.

10. The application stands allowed.

**(Sanjay Priya, J)**

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