

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.45718 of 2013
Arising Out of PS.Case No. -null Year- null Thana -null District-
NAWADA

- =====
1. Nand Lal Prasad Son Of Late Kesho Chouhan Resident Of Village- Nabhuapur, P.O.- Badapur, P.S. Pandarak, District Patna, At Present Resident Of Quarter No. 94, Duranda, Shyamali Colony, P.S. Duranda, District Ranchi (Jharkhand).
 2. Dulari Devi Wife Of Nand Lal Prasad Resident Of Village- Nabhuapur, P.O.- Badapur, P.S. Pandarak, District Patna, At Present Resident Of Quarter No. 94, Duranda, Shyamali Colony, P.S. Duranda, District Ranchi (Jharkhand).

.... Petitioners

Versus

The State Of Bihar.

.... Opposite Party

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Appearance :

For the Petitioners	:	Mr. Amresh Kr. Sinha, Advocate
For the OP No.2	:	Mr. Jitendra Kumar, Advocate
		Mr. Bhavesh Kumar, Advocate
For the State	:	None.

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL JUDGMENT

Date: 21-06-2017

Heard learned counsel for the petitioners,
learned counsel for the opposite party no. 2. No one
appears on behalf of the State.

The petitioners are the father-in-law and
mother-in-law respectively, who are seeking quashing of
the order dated 05.06.2013, passed by the learned Sub-
Divisional Judicial Magistrate, Nawada, in connection with
Complaint Case No. 392/2013.

Learned counsel for the petitioners submits
that on perusal of the complaint petition it appears that no



prima facie case is made out against these two petitioners. They are vague and general allegations without there being any substance.

Learned counsel for the petitioners also pointed out that much before filing of the present complaint case by opposite party no. 2, the husband of opposite party no.2 filed a Matrimonial Title Suit No. 245/2011 in the Court of learned Principal Judge, Family Court, Ranchi, seeking decree for judicial separation. He has pointed out that earlier a petition under Section 9 of the Hindu Marriage Act was filed for restitution of conjugal rights, but that having failed; the application was made for judicial separation.

It is submitted that the opposite party no. 2 has appeared in the said matrimonial case and at one stage both the parties filed an application under Section 13(B) of the Hindu Marriage Act for a decree of divorce by mutual consent, but, later on, after filing of the said application, the opposite party no. 2 did not appear to support her petition seeking divorce by mutual consent, rather she indulged in filing the present complaint case with *mala fide* intention to harass these petitioners who are the old age parents living separately.

Learned counsel for the petitioners, therefore, submits that it is a *mala fide* prosecution and no fruitful



purpose will be served by allowing the opposite party no. 2 to prosecute these petitioners. In fact, he submits that it will be an abuse of the process of the Court if the petitioners are allowed to be harassed, even though no *prima facie* case is made out from the materials available on record.

Although, learned counsel for the opposite party no. 2 appears, but in sum and substance, he submits that the opposite party no. 2 has lost interest in the present case and is not properly instructing him.

Be that as it may, the materials available on record, particularly the contents of the complaint petition and the matrimonial suit, would show that no *prima facie* case is made out against these petitioners. This Court is of the opinion that further continuance of the criminal proceedings against these petitioners would only be an abuse of the process of the Court.

In the circumstances, as mentioned above, let the order dated 05.06.2013, passed by the learned Sub-Divisional Judicial Magistrate, Nawadah in connection with Complaint Case No. 392/2013, in so far as it relates to the present petitioners, stands quashed.

Rajeev/N.A.F.R.

(Rajeev Ranjan Prasad, J.)

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