

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.50582 of 2013

Arising Out of PS. Case No.-627 Year-2012 Thana- PATNA COMPLAINT CASE District-
Patna

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1. MANOJ PRASAD @ MANOJ KUMAR S/O LATE SURENDRA PRASAD RESIDENT OF PURANI BAZAR WARD NO.-6, BAKHTIYARPUR, P.S.- BAKHTIYARPUR, DISTRICT- PATNA
 2. ANITA DEVI W/O MANOJ PRASAD @ MANOJ KUMAR RESIDENT OF PURANI BAZAR WARD NO.-6, BAKHTIYARPUR, P.S.- BAKHTIYARPUR, DISTRICT- PATNA

... .. Petitioner/s

Versus

1. The State Of Bihar
2. Rita Devi W/O Manoj Prasad Swernkar Resident Of Village- Purani Bazar Bakhtiyarpur, P.S.- Bakhtiyarpur, District- Patna

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr. Bipin Kumar, Adv
For the State	:	Mr. S.EHTESHAMUDDIN(APP)
For the O.P. No. 2	:	Mr. Rajesh Kumar Sinha, Adv

CORAM: HONOURABLE MR. JUSTICE S. KUMAR

ORAL JUDGMENT

Date : 06-12-2017

Heard learned counsel for the petitioners, learned
counsel for the State and learned counsel for the O.P. No. 2.

This petition under Section 482 of the Cr.P.C has
been filed for quashing the order dated 22.12.2012, passed by
S.D.J.M. Barh, in complaint case No. 627(C) of 2012 by which
the court below has taken cognizance against the petitioners for
the offences punishable under Sections 494 and 498A of the
IPC.

Briefly stated, the facts of the case is that
Complaint Case No. 627(C) of 2012 was registered on the basis



of complaint petition filed before the A.C.J.M, Barh, on behalf of complainant-opposite party Rita Devi on 11.09.2012. It has been contended in the complaint petition that complainant-opposite party no. 2 was married with accused-petitioner Manoj Prasad Swarnkar, according to hindu rites and customs in the year 1991. After marriage the complainant-opposite party no. 2 gave birth to a male child and a female child who are living with the complainant. The husband used to run a Watch Shop and used to go and remain absent from the house for several days. About one month back the husband of the complainant went outside her house saying to the complainant-opposite party no. 2 that he was going to Lucknow for marketing purpose and shall return after a week. Incidentally the complainant found her husband-petitioner moving in the Bakhtiyarpur market and when she enquired the husband disclosed to the complainant that he has entered into second marriage and has two sons and one daughter from second wife and also assaulted the complainant-opposite party no. 2. The petitioner-husband ousted the complainant and her two children from the house after snatching her belongings. The complainant-opposite party no. 2 had to take shelter in the house of her Mausi and is fully dependent on petitioner husband. On the basis of said



complaint, Complaint Case No. 627(C) of 2012 was registered for the offences punishable under Sections 494 and 498A of the IPC.

The complainant-opposite party no. 2 was examined on S.A. by the court below and in support of her complaint case, witnesses were also examined by the court below and on the basis of S.A. of complainant-opposite party no. 2 and enquiry witnesses, the court below found *prima facie* case to be made out against the accused-petitioners and took cognizance of the offence under Section 494 and 498A of the IPC and issued summons for their appearance to face the trial.

It has been submitted on behalf of the petitioners that petitioner no. 1 is the husband of the complainant-opposite party no. 2 Rita Devi and petitioner no. 2 is the second wife of the petitioner no. 1 Manoj Kumar @ Manoj Prasad. Marriage between petitioner no. 1 and complainant-opposite party no. 2 was solemnized in the year 1991 and complainant-opposite party no. 2 thereafter gave birth to two children and all of a sudden on 21.08.1996, the complainant-opposite party no. 2 left the house on her own volition and gave a written declaration that she is leaving the house forever on her own free will. Petitioner no. 1 thereafter tried to persuade the complainant-



opposite party no. 2 to return to her marital home but all the request and efforts of petitioner no. 1 went in vain and she did not return to her marital home. The petitioner-husband also approached the family members of the complainant-opposite party no. 2 but did not succeed and his all efforts failed and there was no one to look after the family of petitioner and his ailing parents, as such he solemnized the second marriage with petitioner no. 2 with knowledge and consent of the complainant-opposite party no. 2 in the year 1999 and thereafter three children has been born out of the said wedlock. After about 16 years on 20.04.2012, the complainant-opposite party no. 2 all of a sudden came to the house of petitioner no. 1 and lived there about one and a half months and again left the house with her own will and thereafter in August-2012 the complainant-opposite party no. 2 with her family members came to the house of petitioner-husband and abused and threatend him and for which the petitioner-husband filed an infromatory petition in the court of ACJM, Barh stating therein about his manhandling by his in-laws on 22.08.2012 in Misc. Case No. 457(M) of 2012. After 22 days of lodging of said miscellenaous case, the complainant-opposite party no. 2 has lodged the present case and it a counter blast of the said case.



From the statements made in complaint petition, there is no allegation of any torture committed by petitioner nos. 1 or 2 or any demand of dowry and torture and atrocities committed on behalf of the petitioners for non fulfillment of demand of dowry, as such the essential ingredients in order to constitute offence under Section 498A is completely lacking and the court below erred in fact as well as law by taking cognizance under Section 498A of IPC.

After hearing the parties, the matter was sent to the Mediation and Conciliation Centre of Patna High Court, and both parties had agreed to find out some amicable settlement arising out of present dispute. However, two efforts made by this court for amicable settlement failed and the parties could not agree for negotiated settlement and the mediation failed.

After going through the complaint petition, it is apparent that there is no allegation of any demand of dowry by the petitioner from the complainant-opposite party no. 2 or any torture committed by petitioner-husband for non fulfillment of demand of dowry, as such the essential ingredients in order to constitute offence under Section 498A is not made out and therefore, the cognizance taken by the court below under Section 498A of the IPC is not made out and accordingly



quashed.

However, it is an admitted fact that petitioner has entered into second marriage during subsistence of first marriage and same is an offence under Section 494 of IPC and therefore, no interference is required as far as order of cognizance under Section 494 is concerned.

In the result, the petition is partly allowed and cognizance for the offence under Section 498A of the IPC is quashed, however, no interference is required as far as cognizance of the offence under Section 494 of the IPC is concerned.

The petition is partly allowed.

(S. Kumar, J)

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AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	12.12.2017
Transmission Date	12.12.2017

