

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.30542 of 2011

Arising Out of PS.Case No. -124 Year- 2007 Thana -Kharagpur District- MUNGER

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1. Md. Pappu Khan, son of Late Md. Mohit Khan
 2. Md. Firoj Khan, son of Late Md. Mohit Khan
 3. Bibi Sitara, daughter of late Md. Mohit Khan
 4. Bibi Tamunita, wife of Late Md. Mohit Khan
- All resident of Mohalla- Baluwaghat Road Sultanganj, P.S. Sultanganj, Dist- Bhagalpur.

.... Petitioners

Versus

1. The State of Bihar.
2. Robina Khatoon, wife of Md. Pappu Khan, daughter of Moinuddin Khan, resident of Mohalla- Khash Bazar, Shekh Tola, P.S. Haweli Kharagpur, Dist- Munger.

.... Opposite Parties

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Appearance:

For the Petitioners	:	Mr. Dhananjay Kumar, Advocate
For the State	:	APP
For the O.P. No. 2	:	None

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CORAM: HONOURABLE MR. JUSTICE VIKASH JAIN

ORAL JUDGMENT

Date: 20-04-2017

The present petition has been filed for quashing the order dated 13.06.2008 passed by the learned Chief Judicial Magistrate, Munger in Haweli Kharagpur P.S. Case No. 124 of 2007 by which cognizance has been taken against the petitioners for the offences under Sections 498(A), 323, 406/34 of the Indian Penal Code and 3/4 of the Dowry Prohibition Act.

2. The prosecution case in short is that the complainant was married to the petitioner no. 1 in the year 2000 but after marriage, the accused persons made various demands for dowry, and upon failure to fulfill the same, the complainant was abused and assaulted by the



accused persons.

3. Learned counsel for the petitioners at the very outset, invites attention to the fact that despite service of notice upon opposite party no. 2 pursuant to order dated 08.12.2011, she did not appear and accordingly fresh notices were directed to be issued by order dated 21.11.2013. Earlier, a petition dated 04.01.2008 was filed before the learned Chief Judicial Magistrate, Munger with a prayer for withdrawal of the complaint in view of conjugal harmony having been restored. Subsequently however, Opposite Party No. 2 expressed unwillingness to reside with the petitioner and a *Panchnama* was made in the *Panchayati* held on 02.06.2009 in which she has stated that she no longer has any relation with her in-laws and she was leaving of her own volition. After appearance on a few dates before this Court, the matter was referred to Mediation Centre, Patna High Court which however failed owing to the opposite party no. 2 never having appeared despite service of notices, as evident from the Mediator's report dated 03.11.2014.

4. None appears on behalf of the opposite party no. 2 when the case is called out even today.

5. Having heard learned counsel for the petitioners and on consideration of the materials on record, this Court finds merit in the petition. It is evident from the record of the case that she had clearly expressed her unwillingness to continue residing with the petitioners. She voluntarily severed her relationship with them while specifically



stating that she had no problems in her matrimonial home, as recorded in the *Panchnama* prepared in the *Panchayati* held on 02.06.2009. Besides, despite valid service of notices at various stages, the opposite party failed to appear regularly before this Court in order to oppose the present petition. She also never appeared before the Mediator when the matter was referred to the Mediation Centre by this Court.

6. In the above view of the matter, this Court is of the view that continuance of the prosecution proceedings against the petitioners would amount to abuse of the process of court. Accordingly, the cognizance order dated 13.06.2008 passed by learned Chief Judicial Magistrate, Munger in Haweli Kharagpur P.S. Case No. 124 of 2007 is hereby quashed and the petition stands allowed.

7. Registry is directed to send back the lower court records without any delay.

(Vikash Jain, J)

Md. Ibrarul/psc

AFR/NAFR	NAFR
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