

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.40712 of 2009

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1. Murari Kumar son of Ram Kishore Singh.
 2. Ram Kishore Singh, son of late Ram Udit Singh.
 3. Sangita Devi @ Sangita Kumari, W/o Ram Kishore Singh.
 4. Ramanand Singh, son of late Raudit Singh.
 5. Shyam Sundri Devi, W/o Ramanand Singh.
 6. Maheshwar Prasad @ Maheshwar Prasad Singh, S/o late Ramudit Singh.
- All are residents of village- Singh Pansalla, P.S.- Muffasil, District- Begusarai.
- Petitioner/s

Versus

1. The State of Bihar
 2. Soni Kumari, W/o Murari Kumar, D/o Ganga Singh, resident of village- Virindaban, P.S.- Naokothi, District- Begusarai.
- Opposite Party/s

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Appearance :

For the Petitioner/s	:	Mr. Jai Prakash Singh, Advocate.
For the State	:	Mr. Md. Mushtaque Alam, APP
For the O.P. No. 2	:	Ms. Anita Kumari Singh, Advocate.

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CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR

ORAL JUDGMENT

Date: 10-10-2017

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

2. This application has been filed by the petitioners invoking inherent jurisdiction of this Court, under Section 482 of the Code of Criminal Procedure, 1973, seeking quashing of the cognizance order dated 03.11.2009 passed by the S.D.J.M., Begusarai in Complaint Case No. 1122C of 2008 thereby taking cognizance of offence under Section 498A of the Indian Penal Code and Section 4 of the Dowry Prohibition Act and issued summons to the petitioners/accused to stand on trial in the case.



3. Short fact giving rise to the case is that a complaint was filed by Soni Kumari, O.P. No. 2 herein, stating therein that her marriage was solemnized with Murari Kumar, petitioner no. 1 herein, on 23.11.2007 and on the occasion of marriage, some gift items were also given to the bridegroom. She came to her matrimonial home after marriage thereafter all accused persons started taunting the complainant and asked her to bring Rs. 5 lacs from her parents and for that reason, she was tortured and assaulted and made an attempt to end her life but anyhow she escaped and came back to her parents' home.

4. Learned counsel appearing on behalf of the petitioners submits that petitioner no. 1 was forcibly kidnapped by the father and brother of the complainant and in that connection petitioner no. 2, father of the boy (petitioner no. 1), lodged a police case bearing Begusarai (Town) P.S.Case No. 380 of 2007 on 28.11.2007 under Section 364 of the Indian Penal Code and the boy was recovered on 29.11.2007 from the house of a lady and police, after investigation, finding the case true, submitted charge sheet and at present the case is pending in the sessions court where trial is going on. Moreover, immediately, after recovery of the boy, he filed a Matrimonial Case No. 117 of 2007 under Sections 5 and 12 of the Hindu Marriage Act on 20th December, 2007 in the Family Court, Begusarai for declaring



the marriage null and void. Complainant and her father appeared in the aforesaid matrimonial suit and the case was contested. The Family Court, after hearing the parties, has passed judgment on 17th July, 2013 declaring the marriage of the petitioner no. 1 null and void and accordingly dissolved the same, so the complainant was not married with the petitioner no. 1 and she never lived with him and the family, therefore, there is no question of making any demand of dowry and committing torture in that connection, therefore, continuation of criminal proceeding in the matter would be an abuse of the process of the court.

5. Learned counsel for the petitioners also placing reliance in the case of ***Ram Sarowar Singh @ Sarowar Singh & Ors. vs. State of Bihar*** reported in ***2008(3) PLJR 567***, submits that the facts of that case was akin to the present one and in that case, boy was kidnapped and forcibly got married thereafter the case under Section 498A of the Indian Penal Code was filed and the court considering the case of both sides, quashed the criminal proceeding. Further reliance is placed on an unreported judgment dated 07.09.2017 passed in Cr. Misc. No. 8152 of 2012 (***Gautam Kumar vs. The State of Bihar & Anr.***). Referring the aforesaid case, learned counsel submits that on the similar facts of the case, cognizance order was quashed by this Hon'ble Court.



6. Learned counsels appearing on behalf of the State and the O.P. No. 2 jointly submit that there is no illegality in the impugned order, boy was major, above 18 years of age when the marriage was solemnized and thereafter torture was committed with the complainant.

7. Having considered the rival submissions and on perusal of record, the Court finds that certain facts are established by the petitioners. One of it is the institution of FIR i.e., Begusarai Town P.S.Case No. 380 of 2007 on 28.11.2007, against the father and brother of the present complainant/O.P. No. 2 under Section 364 of the Indian Penal Code for alleged kidnapping of the petitioner no. 1. The police finding the case true submitted charge sheet and after framing of charge, trial is proceeding in the matter in the sessions court. Immediately after recovery of the boy, a matrimonial suit was filed by the petitioner no. 1 under Sections 5 and 12 of the Hindu Marriage Act, 1955 seeking dissolution of marriage, on conclusion of trial, the court declared the marriage null and void because for marriage no consent was given by either the boy or his parents. A copy of the judgment passed in matrimonial case No. 117 of 2007 is filed by the petitioners by supplementary affidavit showing that the case, on contest, was decreed in favour of the petitioner no. 1. The marriage was dissolved as the same was found null and void. The



opposite parties in the matrimonial suit failed to establish the factum of solemnization of marriage with the petitioner no. 1. There is also no dispute that at the time of marriage, as per matriculation certificate of the petitioner no. 1, he was below 18 years of age, so this fact was established by the petitioners by unimpeachable and sterling documents and the same cannot be denied.

8. So, in view of the fact that marriage of the complainant declared null and void and the trial against her father and brother already going on for alleged kidnapping of petitioner no. 1, filing of present complaint case appears to be malicious in nature and continuation of criminal proceeding would be an abuse of the process of the court. Therefore, the entire criminal proceeding inclusive of the cognizance order dated 03.11.2009 passed by the S.D.J.M., Begusarai in Complaint Case No. 1122C of 2009 is hereby quashed and set aside.

9. The applications stands allowed.

(Arun Kumar, J)

Sujit/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	16.10.2017
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