

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.14564 of 2011

=====

1. Brajesh Kumar S/O Dayanand Yadav R/O Village - Chukti, P.S. - Mansi,
District - Khagaria
2. Dayanand Yadav S/O Late Nand Kishore Yadav R/O Village - Chukti, P.S. -
Mansi, District - Khagaria
3. Malti Devi W/O Dayanand Yadav R/O Village - Chukti, P.S. - Mansi, District -
Khagaria
4. Tej Narayan Yadav S/O Dayanand Yadav R/O Village - Chukti, P.S. - Mansi,
District - Khagaria
5. Rinkan Kumari D/O Dayanand Yadav R/O Village - Chukti, P.S. - Mansi,
District - Khagaria

.... Petitioners

Versus

1. The State Of Bihar
2. Vinita Kumari wife of Brajesh Kumar, R/o village- Chukti, P.S.- Mansi,
District- Khagaria

.... Opposite Parties

=====

Appearance :

For the Petitioner/s : Mr. S. S. Sharma, Advocate

Mr. Rajesh Kumar, Advocate

For the Opposite Party/s : Mr. Nagendra Prasad Yadav, Advocate

Mr. Fakhruddin Ali Ahmad, Advocate

=====

CORAM: HONOURABLE MR. JUSTICE JITENDRA MOHAN SHARMA
ORAL JUDGMENT

Date: 18-04-2017

This Criminal Miscellaneous application has been filed for quashing the order dated 10.05.2010 passed by learned S.D.J.M., Khagaria whereby and whereunder the learned S.D.J.M. has taken cognizance against the accused persons for the offence under Section 498A of the Indian Penal Code in Protest-cum-Complaint Case No. 553 C of 2008 arising out of Chautham (Mansi) P.S. Case No. 124 of 2006.

2. Heard learned counsel for the petitioners, learned APP and learned counsel representing Opposite Party No. 2.

3. As per protest complaint, the complainant was married to Lakhan Lal, son of petitioner no. 2 Dayanand Yadav, in the year 2001 and



a daughter Prerna @ Mithi was born out of the wedlock. Unfortunately, her husband died due to tetanus, thereafter, she was married to 4th son of petitioner no. 2 Dayanand Yadav, namely, Brajesh Kumar on 24.11.2005. Informant's mother paid Rs. 80,000/- to her husband for securing job in the Railway but thereafter, further demand of Rs. 2 lakh was made and her widow mother was not able to pay, resulting, she was harassed by her in-laws. The complainant was examined on Solemn Affirmation and thereafter, on her behalf Rajesh Kumar Yadav CW 1, Wakil Yadav CW 2 and Manish Kumar CW 3 were examined during inquiry and the learned S.D.J.M. after considering those materials collected during inquiry found that prima facie case is made out against the accused persons under Section 498A of the Indian Penal Code and accordingly, passed the order for issuing summons to the accused persons.

4. Submission on behalf of the petitioners is that the petitioner Brajesh Kumar was not married with the complainant and all these facts have come during investigation and accordingly, final form was submitted but again this protest-cum-complaint petition has been filed. CW 1 Rajesh Kumar Yadav upon court question has stated that on 24.11.2005 Brajesh performed second marriage at Samastipur, so the allegation that Brajesh Kumar Yadav was married with complainant on 24.11.2005 is falsified but without considering all these facts learned S.D.J.M. passed the order taking cognizance under Section 498A IPC. On 24.11.2005, the petitioner was on duty in Railway at Rajasthan. The marriage was never performed as per Hindu rites and for demanding dowry in such a situation appears not



reliable and probable. It is also submitted that the complainant has filed case under Section 125 Cr.P.C. and the learned Principal Judge of Family Court dismissed the petition holding that she is not a legally married wife of Brajesh Kumar so the order taking cognizance is bad in law and is fit to be quashed.

5. On the other hand, learned APP duly assisted by learned counsel for the opposite party no. 2 submits that the learned S.D.J.M. after perusal of the materials collected during inquiry i.e. the statement of complainant on solemn affirmation and the statements of three inquiry witnesses has passed the order which is quite legal, justified and proper and no interference is required by this Court.

6. Having considered the submissions urged at bar, after going through the records, L.C.R. and noticing that the learned S.D.J.M. after perusal of the protest complaint, statement of complainant on S.A and the statements of inquiry witnesses namely, Rajesh Kumar Yadav, Wakil Yadav and Manish Kumar has rightly passed the order taking cognizance under Section 498A of the Indian Penal Code because from those materials collected during inquiry prima facie offence under Section 498A of the Indian Penal Code is made out against the accused persons. At this stage, the court is not required to see the defence of the accused persons. From perusal of the record it also reveals that before charge two witnesses have already been examined and cross-examined by the defence who are Manish Kumar and Wakil Yadav.

7. At this stage, the court is only required to see as to whether on



the basis of materials collected during inquiry prima facie case is made out or not and the learned S.D.J.M. has rightly passed the impugned order. At this stage the defence of the accused cannot be looked into rather that can be adjudged at the time of framing of charge when all these things can be brought during cross-examination by the defence before charge. Thus, finding no illegality, incorrectness or impropriety in the impugned order, the same requires no interference by this Court.

8. In the result, finding no merit in this Criminal Miscellaneous application the same is hereby dismissed.

(Jitendra Mohan Sharma, J)

avin/-

AFR/NAFR	
CAV DATE	
Uploading Date	20.04.2017
Transmission Date	20.04.2017

