

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.30828 of 2014

Arising Out of PS.Case No. -120 Year- 2011 Thana -GAYA
COMPLAINT CASE District- GAYA

=====

Nagendra Kumar @ Babloo S/o Sri Rajendra Prasad R/v- Erki, P.S.-
Belaganj, Distt.- Gaya At present constable no.- 13993074, Swasth
Sangathan Chandi Mandir 134107, Panchkula, Hariyana

.... Petitioner

Versus

1. The State of Bihar
2. Shashi Prabha W/o Nagendra Kumar @ Babloo, D/o Sri Chandra
Bhushan Prasad R/v- Erki, P.S.- Belaganj, Distt.- Gaya. At Present R/v-
Sripur, P.S.- Belaganj, Distt.- Gaya Opposite Parties

=====

Appearance :

For the Petitioner : Mr. Vijay Kumar Sinha

For the Opposite Parties : Mr. Narendra Kumar Singh(APP)

=====

CORAM: HONOURABLE MR. JUSTICE MADHURESH PRASAD
ORAL ORDER

5 23-08-2017 Heard learned counsel for the petitioner and learned
Additional Public Prosecutor for the State.

The petitioner has challenged the order, dated 7.12.2011
passed by the Sub Divisional Judicial Magistrate, Gaya, in
Complaint case no. 120(C) of 2011, by which he has taken
cognizance of the offence under sections 498A, 465 and 417 of
the Indian Penal Code and section 3/4 of the Dowry Prohibition
Act.

Petitioner is husband of the complainant/opposite party
no.2. Submission made on his behalf is that the instant case has
been filed seven years after the marriage when the complainant
learnt that her name has not been incorporated in the Service



Book of the petitioner as his wife. Other submission of the petitioner is that his marriage was never consummated with the complainant and she had left the matrimonial home just a week after the marriage in the year 2003. He also submits that the ingredients of Sections 465 and 417 of the Indian Penal Code are not attracted against him as per the allegations made in the complaint, therefore, order taking cognizance is bad in law.

I have gone through the complaint. From perusal of paragraphs 4, 5 as well as other paragraphs of the complaint, prima facie, allegations, as regards the solemnization of marriage in the year 2003 and subsequently subjecting her to torture for the demand of dowry, are made out. Other allegation, disclosed in the complaint, is that the petitioner did not get entered complainant's name in his service book as his wife, though she was his legally wedded wife.

Learned counsel for the petitioner has drawn my attention to the affidavit of the complainant contained in Annexure 2 series to submit that from perusal of the same it is apparent that the complainant has admitted to being living separately from the petitioner/husband.

In the said affidavit, she has stated that her husband has deserted her and separated for demand of dowry and also



having illicit relation with other lady. She has further stated that her father is maintaining her at his house by taking loan.

Since, the defence of the petitioner and factual contentions including the affidavit (Annexure 2 series) cannot be looked into by this Court in exercise of jurisdiction under section 482 of the Code of Criminal Procedure, it is not the appropriate stage to appreciate the points raised by the petitioner. However, it will be open for the petitioner to raise the points at the appropriate stage before the court below, which may be considered by it in accordance with law without being prejudice by this order.

The petition is dismissed with the aforesaid observations.

(Madhuresh Prasad, J)

Shashi.

U		T	
---	--	---	--

