

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.45012 of 2014

Arising Out of PS.Case No. -305 Year- 2012 Thana -SAMASTIPUR COMPLAINT CASE District-
SAMASTIPUR

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1. Shiv Prasad @ Shankar son of Sri Baldeo Singh
2. Baldeo Singh son of Late Dhodhai Singh
3. Chita Devi wife of Baldeo Singh
4. Shambhu Prasad son of Baldeo Singh
5. Sunita Devi wife of Shambu Singh
6. Kailash Prasad son of Baldeo Singh
7. Subhash Prasad son of Baldeo Singh, All are resident of Village- Belari, P.S.-
Ujiarpur, District- Samastipur

.... Petitioners

Versus

1. The State of Bihar
2. Meena Kumari W/o Shiv Prasad @ Shankar daughter of Ramdil Singh, resident
of Village- Patailee, P.S.- Ujiarpur, District- Samastipur

.... Opposite Parties

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Appearance :

For the Petitioners : Mr. Sanjay Kumar Mishra, Advocate
For the Opposite Parties : Mr. Humayu Ahmad Khan, APP

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CORAM: HONOURABLE MR. JUSTICE SANJAY KUMAR

ORAL JUDGMENT

Date: 31-10-2017

This application under Section 482 of the Cr.P.C. has been
filed to quash the order dated 24.08.2012 passed by SDJM,
Dalsinghsarai in Trial No.1174 of 2014 arising out of Complaint Case
No.305 of 2012 whereby and whereunder the learned Magistrate
finding prima-facie case for the offence under Section 498A of the
IPC and Section 4 of the Dowry Prohibition Act took cognizance
against the petitioners.

2. Heard learned counsel for the petitioners and learned
APP for the State.



3. The Opposite Party No.2 filed a complaint case on the file of ACJM, Dalsinghsarai against the petitioners for the offence under Sections 323, 342, 379, 504 and 498A of the IPC and Section 3/4 of the Dowry Prohibition Act. The learned Magistrate held enquiry and finding prima-facie case took cognizance as per impugned order. The learned counsel for the petitioners submits that the Opposite Party No.2 is not willing to live with her as husband. The husband had filed a Matrimonial Suit No.266 of 2012 for Restitution of Conjugal Right but on the assurance of Opposite Party No.2 and her father to this effect that the wife will lead conjugal life, the said case was withdrawn by the husband as per order dated 16.06.2013. The Opposite Party No.2 without dissolution of existing marriage tie has married with Ramesh Mahto, son of Sundeshwar Mahto, resident of village-Jitwariya, P.S. Kalayanur, District-Samastipur on 28.05.2014. The petitioner has filed a petition to this effect before the court below on 25.06.2015 but the Opposite Party No.2 even after passing over a period of two years has not filed any rejoinder. She has left taking interest in the case before the court below which is apparent from the report of court below as submitted vide letter no.425 dated 16.10.2017. It was also submitted that the husband was granted anticipatory bail by this Court on 04.03.2014 in Cr.Misc.No.23067 of 2013 with a direction to the husband to deposit



Rs.750/- per month in the court below giving liberty to the wife to withdraw the said amount without prejudice the right of the parties. The petitioner (husband) is depositing the said amount since the date of order but the Opposite Party No.2 has not withdrawn the said amount. The allegation of demand of Rs.1,00000/- and torture on account of non-payment is omnibus. The Opposite Party No.2 hardly resided nine days at the matrimonial house and the present case has been lodged only to harass the petitioner. The criminal prosecution of these petitioners in the above background is misuse of the process of the Court and so the same is fit to be quashed.

4. The learned APP on the other hand opposed the submissions.

5. On perusal of complaint petition and documents produced by the petitioner which is part of a supplementary affidavit, it appears that after filing of the complaint case, she has married with Ramesh Mahto. This fact finds support by Annexure-5 of the application (i.e. marriage certificate duly granted by Gram Panchayat). The allegation of torture in connection with demand of Rs.1,00000/- appears omnibus. From the record, it further appears that the Opposite Party No.2 resided only nine days at the place of the petitioner. The Opposite Party No.2 was noticed and in spite of service of notice she did not appear to oppose the submissions. From



the report of the learned court below, it appears that a petition to this effect is pending since June, 2015. The Opposite Party No.2 has left taking interest and she has not filed any rejoinder to the petition filed on behalf of the husband before the court below. In such circumstances, the criminal prosecution of the petitioners appears to be abuse of the process of the Court.

6. In view of above discussions, this criminal miscellaneous application is allowed and the order dated 24.08.2012 taking cognizance against the petitioners is hereby quashed.

(Sanjay Kumar, J)

B.Kr./-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	02.11.2017
Transmission Date	02.11.2017

