

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.30281 of 2010

Arising Out of PS.Case No. -0 Year- null Thana -null District- NALANDA (BIHARSHARIFF)

- =====
1. Ghamandi Mahto @ Pairu Mahto, S/o late Bhikshuk Mahto
 2. Santosh Kumar, S/o Sri Ghamandi Mahto
 3. Kumaria Devi, W/o Sri Ghamandi Mahto
 4. Bipin Prasad, S/o Sri Ghamandi Mahto
 5. Babita Devi, W/o Bipin Prasad
- All R/o village- Bajrang Bigha, P.S.- Kasichak, District- Nawada
.... Petitioners
- Versus
1. State of Bihar
 2. Nitu Devi, D/o Anil Prasad
- R/o village- Pesaur, P.S.- Rahui, District-Nalanda
.... Opposite Parties

=====

Appearance :

For the Petitioners : Mr. Sanjay Prasad, Advocate
For the Opposite Parties : Md. Sufiyan (APP)

=====

CORAM: HONOURABLE MR. JUSTICE SANJAY PRIYA

ORAL JUDGMENT

Date: 19-01-2017

This application has been filed under Section 482 of Cr.P.C for quashing the order of the Cognizance dated 13.12.2004 passed by learned Sub-Divisional Judicial Magistrate, Nalanda at Bihar Sharif, in Complaint Case No. 640C of 2004, against these petitioners.

Heard both the parties.

From the record, it appears that vide order dated 01.03.2011 further proceeding was stayed in the lower court. It further appears that on 27.02.2012 this case was directed to be listed after disposal of Misc. Appeal No. 650 of 2011. The office has reported on



16.01.2017 that Misc. Appeal No. 650 of 2011 has already been dismissed for default.

The counsel for the petitioners has submitted that marriage itself has been declared null and void, then the initial order of cognizance becomes bad in law. He has relied upon a decision reported in **2004 Cr. Law Journal 1974 Raghothaman Vs. State of Karnataka**, in support of his submission. From reading the aforesaid judgment, it appears that the fact of that case was different where the girl was already married with different person on the date of occurrence.

In the instant case from the complaint, it appears that marriage between the parties was in existence which was declared null and void by subsequent judgment dated 29.11.2008 passed by learned Principal Judge, Family Court, Nawada, in T.S. No.115 of 2003.

Learned A.P.P has submitted that in the instant case the occurrence of torture took place in the year 2004. The learned Sub-Divisional Judicial Magistrate has after holding inquiry found prima-facie case against the accused persons under Sections 498A and 379 of the Indian Penal Code on 13.12.2004. The point taken by the petitioners is that the marriage was later on declared null and void vide order dated 29.11.2008 passed by the learned Principal Judge, Nawada, in T.S. No. 115 of 2003. In such circumstances on the date



of occurrence the marriage was in existence and on the basis of the allegation made in the complaint and the S.A of the complainant and statement of other witnesses, the learned Sub-Divisional Judicial Magistrate has found prima-facie case for offence under Sections 498A and 379 of the Indian Penal code against the petitioners. The marriage has been declared null and void, subsequently vide judgment dated 29.11.2008, passed by learned Principal Judge, Family Court, Nawada, in T.S. No. 115 of 2003. In such situation, the subsequent order dated 29.11.2008, does not affect the initial order dated 13.12.2004, by which learned court below found prima-facie case against the petitioner after holding inquiry. Admittedly, the marriage was existing at that time.

Therefore, this court does not find illegality in impugned order passed by learned Sub-Divisional Judicial Magistrate, Nalanda at Bihar Sharif by which the learned Magistrate has found prima-facie case against the petitioners under Sections 498A and 379 of the Indian Penal Code.

Accordingly, this criminal miscellaneous application is dismissed.

However, petitioner is given liberty to raise all the points which have been taken in this application at the appropriate stage in lower court which shall be disposed of in accordance with



law without being prejudiced by this order.

(Sanjay Priya, J.)

ravi/-

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

