IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.28303 of 2011

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1. Renu Devi W/O Sanjay Rajak, D/O Ram Naresh Rajak Resident Of Village- Injour, P.S.- Mehandia, Dist.- Arwal
2. Munmun Rajak S/O Ram Varesh Rajak Resident Of Village- Injour, P.S.- Mehandia, Dist.- Arwal
3. Baban Rajak S/O Jangi Rajak Resident Of Village- Injour, P.S.- Mehandia, Dist.- Arwal
4. Anita Devi W/O Baban Rajak Resident Of Village- Injour, P.S.- Mehandia, Dist.- Arwal

.... Petitioners

Versus

1. The State of Bihar
2. Sanjay Kumar S/O Shri Radha Sharan Resident Of Village- Mission Road, Pakri, Ara, P.S.- Nawada, Dist.- Bhojpur.

.... Opposite Parties

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Appearance :
For the Petitioners : Mr. Durgesh Kumar, Advocate
For the Opposite Party No.2 : Mr. Amrendra Kumar, Advocate
For the State : Mr. Dr. Ajeet Kumar, APP

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CORAM: HONOURABLE MR. JUSTICE SANJAY KUMAR
ORAL JUDGMENT
Date: 07-09-2017

This application under Section 482 of the Cr.P.C. has been filed to quash the order dated 01.06.2011 passed by learned Judicial Magistrate, Patna in Complaint Case No.2926 of 2009 whereby and whereunder he refused to discharge the petitioners from the offence and fixed the case for framing charge.

2. Heard and perused the record.

3. The facts in brief is that the Opposite Party No.2 who is husband of petitioner no.1 filed a complaint case on the file of CJM, Patna against the wife and her family members. The petitioner no.2 is

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full brother of petitioner no.1 and petitioners no.3 and 4 are uncle and aunt of petitioner no.1. The husband of petitioner no.1 has alleged that on 02.11.2009 when he was returning to his house after attending his case at Civil Court, Patna his wife and other co-accused surrounded him. They abused, assaulted and obtained his signature on blank papers on pistol point. The other co-accused snatched wrist watch and cash amount of Rs.400/-.

4. The learned counsel for petitioners submits that the Opposite Party No.2 has filed a complaint with false and frivolous allegation only to harass the petitioners. The petitioner no.1 was married with the Opposite Party No.2, After marriage he used to torture and assault the petitioner no.1. The Opposite Party No.2 filed a Matrimonial Case No.459 of 2007 for dissolution of marriage and has married with another lady. The petitioner no.1 had filed a police vide Mehandia P.S.Case No.21 of 2005 against her husband and in-laws for the offence under Sections 498A, 323 and 379 of the IPC and Section ¾ of the Dowry Prohibition Act. The Opposite Party No.2 filed a criminal miscellaneous case no.5405 of 208 for quashing the cognizance order passed in Mehandia P.S.Case No.21 of 2005. The cognizance order was quashed on 10.01.2011 and both parties were directed to file joint affidavit to this effect that they were not willing to pursue the case. The husband of petitioner no.1 has already married

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with another lady. The petitioner no.1 has also married with a person, namely, Uday Rajak on 20.11.2009. The said Uday Rajak has been made accused as accused no.5 in complaint case no.2926 of 2009. It has been further submitted that the allegation made in the present complaint case is improbable in view of the fact that the husband is bent upon to harass the petitioner on account of filing of complaint case under section 498A of the IPC. The learned Magistrate has passed the impugned without applying judicial mind and so the impugned order is fit to be quashed.

5. The learned counsel for the Opposite Party No.2 concedes to the submissions of learned counsel for the petitioners to this effect that the cognizance order passed in complaint case has been quashed and both parties have been directed to file joint affidavit in divorce petition. The learned APP opposed the submissions made on behalf of the petitioner.

6. On perusal of complaint petition, impugned order and the documents produced on behalf of the petitioner, it appears that the petitioner no.1 had lodged a case vide Mehandia P.S.Case No.21 of 2005 against her husband in which the cognizance for the offence under sections 498A, 323 and 379 of the IPC and Section 3/4 of the Dowry Prohibition Act was taken. The cognizance order has been quashed by this Court on 10.01.2011 in Cr.Misc.No.5405 of 2008. In

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the said order, this Court has directed both the parties to file joint affidavit for dissolution of marriage. The present complaint case was filed during the period of hot tussle between the parties and after lodging of police case by the petitioner no.1. The relationship of wife and husband between the parties has ended and after dissolution of their marriage they have married. The prosecution of the petitioners in the above background appears to be an abuse of the process of the Court.

7. In the facts and circumstances stated above, the order dated 01.06.2011 passed by Judicial Magistrate, Patna in complaint case no.2926C of 2009 and prosecution of the petitioners in the said case is quashed and this criminal miscellaneous application is allowed.

(Sanjay Kumar, J)

B.Kr./-

AFR/NAFR	NAFR
CAV DATE	
Uploading Date	13.09.2017
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