

**IN THE HIGH COURT OF JUDICATURE AT PATNA**

**Criminal Miscellaneous No.44070 of 2013**

Arising Out of PS.Case No. -1769 Year- 2009 Thana -GAYA COMPLAINT CASE District- GAYA

- =====
1. Shail Devi @ Shail Sharma W/O Nand Mohan Sharma Resident Of Village- Sarhua, P.S- Markhadumpur, District- Jehanabad.
  2. Nand Mohan Sharma S/O Late Shayamia Prasad Resident Of Village- Sarhua, P.S- Markhadumpur, District- Jehanabad.
  3. Usha Devi D/O Nand Mohan Sharma And W/O Late Dhananjay Kumar Resident Of Mohalla And P.S- Kankarbagh, District- Patna.
  4. Sonu @ Sonu Kumar S/O Nand Mohan Sharma Resident Of Village- Sarhua, P.S- Makhdumpur, District- Jehanabad.
  5. Nand Navin @ Raju S/O Nand Mohan Sharma Resident Of Village- Sarhua, P.S- Makhdumpur, District- Jehanabad.

.... .... Petitioner/s

Versus

1. The State Of Bihar
2. Rina Kumari W/O Nand Navin @ Raju And D/O Sitaram Singh Resident Of Sarhua, P.S- Makhdumpur, District- .....

.... .... Opposite Party/s

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**Appearance :**

For the Petitioner/s : Mr.

For the Opposite Party/s : Mr.

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**CORAM: HONOURABLE MR. JUSTICE SANJAY PRIYA**

ORAL JUDGMENT

**Date: 24-04-2017**

The present petition has been filed for quashing the order dated 26-07-2010 passed by Smt. Anandita Singh, the learned Judicial Magistrate-Ist Class, Gaya in Complaint Case No. 1769 of 2009, by which and whereunder, the learned Magistrate took cognizance against the petitioners for the offence under Sections-498(A)/406 of the Indian Penal Code.

Heard learned counsel for the petitioners and learned counsel appearing for opposite party No. 2.



It has been submitted that the instant complaint case has been filed in the year, 2009 after grant of decree of divorce in favour of husband (petitioner No. 5) in the year, 2008 (10-09-2008). Petitioner Nos. 1, 2, 3 & 4 have no concern with personal relationship of husband and wife. Counsel for opposite party No. 2 has appeared. He has submitted that ex-parte decree of divorce was obtained by husband (petitioner No. 5) without prior service of notice on the complainant. The complainant has taken necessary steps for recall of the ex parte order of divorce passed by the court.

From the impugned order, it appears that after looking into S.A. of the complainant and statement of witnesses, learned Magistrate found prima facie case against the petitioners under Sections-498A/406 of the Indian Penal Code.

As per allegation in complaint petition, the complainant was tortured in her Sasural for demand of Maruti car after marriage and finally, she was ousted from the matrimonial house.

From the allegation made in the complaint, it appears that petitioner Nos. 3 & 4 who are married Nanad and Devar of the complainant did not commit any specific overt act against the complainant. They have no any concern with the family affairs between the husband and wife. Therefore, the impugned order of cognizance and criminal proceeding against petitioner Nos. 3 & 4 is



hereby quashed.

So far as allegation against petitioner Nos. 1, 2 & 5 are concerned; there is specific allegation against all of them of committing physical and mental torture with the complainant for demand of Maruti car and on non-fulfillment of the demand, she was ousted from the house. The allegation has been made against them that they committed torture with complainant since the date of marriage i.e. 23-06-1999.

From the submissions of the petitioners, the marriage has been dissolved vide ex parte decree of divorce passed in Matrimonial Suit No. 50 of 2008.

Counsel for opposite party No. 2 has submitted that he has taken steps in accordance with law for recalling the ex parte order of divorce. This court is of the view that even after grant of divorce in the year, 2008, the petitioner Nos. 1, 2 & 5 will not be exonerated from the criminal offence committed by them prior to the date of divorce.

From the complaint petition itself, it is apparent that the complainant was being tortured by these petitioners since the date of marriage i.e. 23-06-1999. It is specifically alleged in paragraph-12 of the petition that the complainant on account of said mental and physical torture, went in depression in the year, 2007.



Therefore, this court does not find any illegality in the order of cognizance taken against petitioner Nos. 1, 2 & 5. The trial court will proceed against petitioner Nos. 1, 2 & 5 in accordance with law.

Accordingly, this Criminal Misc. petition is allowed in part.

The petitioner Nos. 1, 2 & 5 are given liberty to raise all the points as raised in this Cr. Misc. Application at the time of framing of charge in the case before the court concerned, which shall be disposed off by the court below in accordance with law on its own merit.

**(Sanjay Priya, J)**

A.K.V./-

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