

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.6156 of 2012

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1. Keshav Pd. Singh S/O Ramjee Singh (Informant) Resident Of Village- Dhanarua, Police Station- Kahalgaon (Rashlapur), District- Bhagalpur
 2. Chanda Sinha @ Chanda Devi W/O Keshar Pd. Singh Resident Of Village- Dhanarua, Police Station- Kahalgaon (Rashlapur), District- Bhagalpur

.... Petitioners

Versus

1. The State of Bihar
2. Sonu Priya S/O Late Devi Dayal Ram of Mohalla- S.N. Road, Masak Chak, Police Station- Adampur, Distt.- Bhagalpur (Accused)

.... Opposite Parties

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Appearance :

For the Petitioners	:	Mr. Akhileshwar Prasad Singh, Sr.Advocate
	:	Mr. Shivesh Chandra Mishra, Advocate
For the Opposite Party No.2	:	Mr. Rajni Kant Jha, Advocate
For the State	:	Mr. Akhileshwar Dayal, APP

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CORAM: HONOURABLE MR. JUSTICE SANJAY KUMAR

ORAL JUDGMENT

Date: 07-09-2017

This criminal miscellaneous application under Section 482 of the Cr.P.C. has been filed to quash the order dated 17.01.2012 passed by Additional Sessions Judge-IV, Bhagalpur in Cr.Revisin No.208 of 2011 and also the order dated 16.07.2011 passed by CJM, Bhagalpur in Miscellaneous Case No.14 of 2011. The learned CJM as per order dated 16.07.2011 directed the petitioners to hand over the custody of female child, namely, Arpita Priya @ Nanhi to her father Opposite Party No.2. The petitioners being maternal grand parents filed Cr.Revision No.208 of 2011 which after hearing was dismissed.

2. The facts in brief is that the Opposite Party No.2 was



married to Kamano Kumari @ Rubi Devi. The petitioners before this Court are father and mother of said Kamano Kumari @ Rubi Devi. It is said that on 06.10.2011 these petitioners got information about precarious condition of his daughter who was admitted in J.L.N.M.C.H. Bhagalpur for her treatment. The petitioner no.1 visited at the hospital and came to know that his daughter was done to death by administering poison. Her two minor daughters were also administering poison and out of them one died in the hospital in course of treatment. The second daughter survived and the present dispute relates to her custody. The petitioners after the death of their daughter and one of her female child, brought the second daughter at their place. The Opposite Party No.2 filed a petition under Section 98 of the Cr.P.C. for the custody of said minor daughter which after hearing was allowed and the petitioners were directed to hand over the custody of minor daughter to his father Opposite Party No.2. Against the said order, the petitioners filed criminal revision which after hearing was dismissed. The petitioners have thus, approached the Court to quash the said order passed by the courts below.

3. Learned counsel for the petitioners submits that the Opposite Party No.2 committed murder of his daughter and one of her female child by administering poison. He had administered poison also on the second daughter but on account of treatment she survived.



A police case vide Kotwali P.S. Case No.766 of 2010 as was registered on the fardbeyan of petitioner no.1 against the Opposite Party No.2 and his family members for the offence under Sections 498A and 304B/34 of the IPC. The matter was investigated and police submitted chargesheet under Section 306 of the IPC against the husband and his father. The learned Magistrate took cognizance of offence and the case is pending for trial before the court below. The Opposite Party No.2 filed a petition for his discharge from the offence which was refused and against the said order he has filed Cr.Misc.No.10561 of 2017 and as per interim order further proceeding of trial court has been stayed. It has been submitted that the petitioners have save the life of the girl and at present she is being looked after nicely by the petitioners. The provision of Section 98 Cr.P.C. is not applicable in the present case. The said provision relates to restoration of abducted females. This is not as case of abduction of female child and so the court below has erred passing the order against the petitioners. It has been further submitted that custody of minor girl cannot be handed over to Opposite Party No.2 in view of the fact that he had administered poison to this girl also. The learned Magistrate has erred in directing the petitioners to hand over the child in the custody of Opposite Party No.2. The impugned order is not sustainable and is fit to be quashed.



4. The learned APP as well as learned counsel for the Opposite Party No.2 opposed the submission.

5. On perusal of the application and the annexures enclosed with the petition, I find that a police case of Kotwali P.S.Case No.766 of 2010 for the offence under Sections 498A and 304B of the IPC was registered against the Opposite Party No.2 and the case is pending for trial before the court below. The Opposite Party No.2 had allegedly murdered his wife and one of his daughter by administering poison. This girl was also administered poison but she survived. These petitioners are maternal grand parents of the girl and they took her in their custody at hospital after institution of FIR against Opposite Party No.2. This is not a case of abduction of female so as to attract the provision of Section 98 of the Cr.P.C. The girl is living with these petitioners since last seven years and is presently studying. There is no allegation that the girl was taken by these petitioners for any unlawful purpose. As against this the Opposite Party No.2 is facing criminal case lodged by the petitioners. The court below has committed error in directing the petitioners to hand over the custody of girl to the Opposite Party No.2 and so the same is not sustainable.

6. Having considered the facts and circumstances of the case, both the order dated 17.01.2012 passed by Additional Sessions Judge-IV, Bhagalpur in Cr.Revision No.208 of 2011 and also the order dated



16.07.2011 passed by CJM, Bhagalpur in Miscellaneous Case No.14 of 2011 are 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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