

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.2020 of 2012

Arising Out of PS.Case No. -67 Year- 2008 Thana -Pirpaiti District- BHAGALPUR

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Meena Devi @ Meena Kumari, W/o Satyanarayan Jaiswal, daughter of Sri Shiv Pujan Choudhary, resident of Ashis Store, Mohalla-Bari Kahnjerpur, Jhawa Kothi, P.S.-Barari, District-Bhagalpur

.... Petitioner/s

Versus

1. The State of Bihar
2. Mamta Devi Wife of Dinesh Chandra Chaudhary, resident of village-Pirpaiti, P.S.-Pirpaiti, District-Bhagalpur

.... Opposite Party/s

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Appearance :

For the Petitioner/s	:	Mr. Dhirendra Nath Jha Mr. Chandra Shekhar Sharma
For the Opposite Party/s	:	Mr. Choubey Jawahar
For the State	:	Mr. Humayu Ahmad Khan, APP

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CORAM: HONOURABLE MR. JUSTICE SANJAY KUMAR

ORAL JUDGMENT

Date: 31-08-2017

This application under Section 482 of the Code of Criminal Procedure has been filed to quash the order dated 12.09.2011 passed by the learned Chief Judicial Magistrate, Bhagalpur in G.R. No. 891 of 2008 arising out of Pirpaiti P.S. Case No. 67 of 2008 whereby and whereunder the learned Magistrate finding prima facie case for the offence under Sections 498-A/34 and Section 3/4 of Dowry Prohibition Act summoned the petitioner and other co-accused.

2. Heard both sides.

3. The Opposite Party No. 2 filed a complaint case on the file of C.J.M. alleging inter alia that after marriage, her husband



and in-laws started torturing her and lastly, ousted from their house as the demand of dowry was not fulfilled.

4. The learned counsel for the petitioner submits that the petitioner is the sister of the husband of the complainant. She has no concern with the affairs of the complainant or her husband. The complainant was married with one Rama Shankar Prasad Ram of village Kahalgaon, District-Bhagalpur in the year 2001. Her husband was mad and so, she left her husband's place and developed intimacy with the brother of this petitioner with whom she subsequently married. From the said wedlock, she was blessed with two male children in the year 2004 and 2006. The brother and parents of this petitioner are residents of Pirpainti District-Bhagalpur. The allegation of torture and assault is omnibus against the petitioner and there is absolutely no ingredient attracting the offence under Section 498-A of the Indian Penal Code against the petitioner. The learned Magistrate has passed the impugned order in mechanical manner without their being any material against the petitioner and so, the order is fit to be quashed.

5. The learned counsel for the Opposite Party No. 2 as well as the learned A.P.P. for the State opposed the submissions.

6. On perusal of F.I.R, impugned order and case diary, I find that the complainant (Opposite Party No. 2) was married with



a different person and on account of his madness, she left her first husband and developed intimacy with the brother of this petitioner. The complainant (Opposite Party No. 2) escaped with the brother of petitioner and married with him in a temple. In case diary, I find that the informant, her brother and father have stated that her husband used to torture the complainant. They all have stated about the first marriage of the complainant with another person. The second marriage of the complainant during the lifetime of her first husband is itself void. The petitioner is married Nanad of the complainant residing at different place along with her son. She is a deserted lady and earns livelihood by running a small shop. The husband and parents in-laws of the complainant were residing at village Pirpanti and as per police report, it appears that they are absconding.

7. In this regard, I would like to refer the cases of Neelu Chopra Vs. Bharti (2009)10, SCC 184. Geeta Mehrotra and others Vs. State of UP & others (2012)10 SCC page 741, 2013(2) PCCR 210 (S.C.) and Preeti Gupta & others Vs. State of Jharkhand & others (2010) 7, SCC page 667 wherein the Hon'ble Apex Court has reiterated that in absence of specific allegation and prima facie case against co-accuseds, the order taking cognizance will be bad in law and that will be an abuse of process of court.



8. In the facts and circumstances of the case, the impugned order taking cognizance against the petitioner is quashed and this application is allowed.

(Sanjay Kumar, J)

ajay gupta/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	05.09.2017
Transmission Date	05.09.2017

