

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.3664 of 2012

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1. Retd. Subedar Major Anand Lal Sahni S/O Ramdeo Sahni R/O Village - Satha, P.S. Mansoor Chak, Distt. - Begusarai
 2. Major Pankaj Kumar Sahni S/O Anand Lal Sahni R/O Village - Satha, P.S. Mansoor Chak, Distt. - Begusarai

.... Petitioners

Versus

1. The State Of Bihar
2. Varsha Rani D/O Hari Nandan Prasad, S/O Pritam Mahto R/O Mohalla - Shiv Shakti Nagar (Sandalpur) P.O. Mahendru, P.S. Sultanganj, Distt. - Patna
3. Hari Nandan Prasad S/O Pritam Mahto R/O Village - Satha, P.S. Mansoor Chak, Distt. - Begusarai

.... Opposite Parties

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Appearance :

For the Petitioners : Mr. Vivekanand Prasad Singh, Advocate
For the Opposite Parties : Mr. Ajay Thakur, Advocate.

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CORAM: HONOURABLE MR. JUSTICE SANJAY KUMAR

ORAL JUDGMENT

Date: 07-08-2017

This application under Section 482 of the Cr.P.C. has been filed to quash the order dated 11.11.2011 passed by learned Judicial Magistrate, Ist Class, Khagaria in G.R.No.337 of 2010 whereby and whereunder the learned Magistrate finding prima-facie case for the offence under Sections 192, 199, 196, 197, 200, 416, 420, 496, 469, 109, 500/34 of the IPC took cognizance of offence against the petitioners.

2. The facts giving rise to the application is that the Opposite Party No.2 filed a complaint case no.20 of 2010 against the petitioners which was sent to Khagaria (Chitragupta Nagar) P.S.under Section 156 (III) of the Cr.P.C. A police case was accordingly registered as Chitragupta Nagar P.S.Case No.78 of 2010. The Opposite Party No.3 is the wife of petitioner no.1. The petitioner no.2 is father of petitioner no.1. The wife of petitioner no.1 was allowed maintenance



to the tune of Rs.8472/- per month as per Army rules. The petitioner no.1 in collusion with his father and one of the co-accused, namely, Pawan Kumar Mandal got a Matrimonial Case no.10F of 2006 filed in the Court of Principal Judge, Family Court, Khagaria under Section 9 of the Hindu Marriage for Restitution of Conjugal Right. Thereafter accused Pawan Kumar Mandal filed a petition along with certified copy of petition filed under section 9 of the Hindu Marriage Act to the Armys Authority asserting therein that the Opposite Party No.2 was his legally married wife and so her maintenance as awarded under Army Act in the capacity of wife of petitioner no.1 be stopped. It has been further alleged that in order to deprive her right of maintenance, her husband in collusion with his father and Pawan Mandal have filed the said fictitious matrimonial case and so all the three are liable to be prosecuted for the offence under section 192, 199, 196, 197, 200, 416, 420, 496, 469 read with section 34 and 109 of the IPC. The matter was investigated and police submitted chargesheet under the aforesaid sections. The learned court below after perusing the case diary and police report found sufficient material against the petitioners and co-accused Pawan Mandal and took cognizance of offence.

3. Heard and perused the record.

4. It has been submitted that petitioner no.1 being Army Officer is the subject of the Army Act, 1950. The alleged offence committed by petitioner no.1 in the civil side could be tried under the Code of Criminal Procedure and also by the Court Marshal or it will be the Military authority to decide whether it should be tried by a Court Marshal or under the provision of Section 475 of the Cr.P.C. The learned counsel further submitted that the plaint of Matrimonial Suit No.10F of 2006 was verified and signed in the Court campus and so a private person cannot prosecute the case under section 340 of the Cr.P.C. The Presiding Officer



being custodian of plaint is only competent to initiate proceeding under section 340 of the Cr.P.C. On these two counts the order of Magistrate taking cognizance is bad and is fit to be quashed.

5. The learned counsel or the Opposite Party Nos.2 and 3 as well as APP opposed the submission.

6. On going through the pleadings and documents of both the parties, I find that the allegation against both the petitioners is that they in collusion with Pawan Kumar Mandal got a Matrimonial suit filed in the Court of Principal Judge, Khagaria. The copy of plaint along with an application was sent to the Army authority in order to deprive the Opposite Party No.2 from the maintenance which was allowed in her favour in the capacity of her being the wife of petitioner no.1. The said Matrimonial Suit was dismissed for non-prosecution as the applicant Pawan Kumar Mandal had left taking interest. In the said Matrimonial case the Opposite Party No.3 filed a petition under Section 340 of the Cr.P.C. which was registered as Miscellaneous case and all the three accuseds were directed to submit show cause. The Matrimonial Suit no.10 of 2006 filed by alleged Pawan Kumar Mandal was dismissed on 18.11.2009 for non-prosecution under order IX Rule 8 of the CPC.

7. It further appears that the petitioner had filed criminal miscellaneous no.8540 of 2007 for quashing the order dated 24.12.2005 whereunder charges under Section 498A of the IPC and 3/4 of the Dowry Prohibition Act were found. The petitioners had raised the jurisdiction of civil court in prosecuting the petitioners under the Army Act. The matter was heard and the quashing application was dismissed on 21.06.2011. The petitioner thereafter filed Special Leave Appeal (Crl) No.7197 of 2011 before Apex Court. The matter was heard and the Hon'ble Apex Court dismissed the Special Leave Petition as withdrawn with following observations.



“ Mr. Mohan Jain, learned Additional Solicitor General, states that the Army authorities are not going to take up; the proceeding against the petitioners. He further says that the Army authorities are not going to try the petitioners by court martial.

In view of the statement made by learned Additional Solicitor General that the Army authorities are not going to try the petitioners by court martial, Mr. Nagendra Rai, learned Senior Counsel appearing on behalf of the petitioners, prays for withdrawal of the special leave petition. The special leave petition is permitted to be withdrawn.

The specials leave petition is dismissed as withdrawn.”

8. So far filing of case for the offence under Section 340 Cr.P.C, I find that the plaint of Matrimonial suit was filed on 05.12.2006 by Pawan Kumar Mandal. The plaint was presented after verification by the applicant. It is not the case of either party that any interpolation or forgery was committed in the plaint after its presentation in Court and so it will not come under the purview of Section 195 (i)(6)(ii) of the Cr.P.C. I find that the order taking cognizance cannot be said to be against the provision of law. Moreover, the application of Army Act has been set at rest by the Apex Court.

9. In view of discussions made above, I do not find any merit in the application and is accordingly, dismissed.

(Sanjay Kumar, J)

B.Kr./-

AFR/NAFR	NAFR
CAV DATE	
Uploading Date	21.08.2017
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