

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.8119 of 2014

Arising Out of PS.Case No. -1 Year- 2013 Thana -KAJRA SAHAYAK District- LAKHISARAI

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Lal Bahadur Prasad Son Of Sri Govind Prasad @ Govind Nonia Resident Of
Village - Uren, P.S.- Kajra, Distric - Lakhisarai

.... Petitioner

Versus

1. The State Of Bihar
2. Sheela Devi Wife Of Late Suresh Prasad Nonia Resident Of Village - Uren, P.S.-
Kajra, Distric - Lakhisarai

.... Opposite Parties

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Appearance :

For the Petitioner : Mr. Manoj Kumar, Advocate

For the State : Mr. Ajay Kumar No.I, A.P.P.

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CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR

ORAL JUDGMENT

Date: 29-08-2017

The petitioner has filed this application under Section 482 of the Code of Criminal Procedure, 1973 for quashing the order dated 20.1.2014 passed by C.J.M., Lakhisarai in Kajra P.S. Case No.01 of 2013 whereby taking cognizance of the offence under Sections 498(A), 323, 420, 494 and 504 of the Indian Penal Code.

2. A brief fact as stated in the complaint filed by opposite party no.2 is that she was married 30 years back to Suresh Prasad the brother of the petitioner and out of the said wedlock two sons and one daughter were born but after death of her husband her father-in-law and mother-in-law put a



proposal to marry with the petitioner and in the house the marriage was solemnized and for last 15 years they have been living as husband and wife. In the years 2011, he married with another lady and started neglecting her and in panchayati he promised to give Rs.1,00,000/- to lead her life but retracted for that promise she also alleges of committing rape against the petitioner.

3. Learned counsel for the petitioner submits that the learned Magistrate has referred certain paragraphs of the case diary in the impugned order and has taken cognizance of the offence but those paragraphs do not disclose that this petitioner was married with the complainant. She herself admits that she was married to his brother Suresh Prasad 30 years back and the petitioner is of the age of the daughter of the complainant. She was never married with the petitioner. He only took care of her and her children as his brother was murdered. The petitioner married with a girl only thereafter she lodged this false and frivolous case as she got apprehended that she would not get any share in the property of the petitioner. Petitioner also refers to some document, a copy of the Life Insurance Policy dated 28.3.2010 in the name of Sheela Devi opposite party no.2 showing wife of late Suresh Prasad. He also refers and files a



copy of family partition in which the petitioner, his brother's, his father and opposite party no.2 are signatories accepting their respective allotted shares.

4. Contrary to that the learned counsel appearing on behalf of opposite party no.2 submits that the petitioner married with opposite party no.2 after death of her husband. In recent past he married another woman and police has submitted charge sheet against him.

5. Having considered rival submissions and on perusal of record, this Court finds no evidence to show that the opposite party no.2 was married with the petitioner only few witnesses have stated during investigation that after death of her husband she was living with the petitioner. It is also an admitted position that she was married 30 years back to the brother of the petitioner and offence under Section 498A of I.P.C. is only attracted against the husband and the relative of the husband in case of subjecting the women to cruelty. There is no evidence to show that the opposite party no.2 was married with the petitioner and there is no allegation that she was subjected to harassment to meet any unlawful demand or any property; there is absence of such evidence that she was subjected to such cruelty as is likely to drive to commit suicide.



Above all as there is absence of such evidence of her marriage with the petitioner, so prima facie no offence is made out. Hence, for the said reason the order dated 20.1.2014 and subsequent criminal proceeding against the petitioner is hereby quashed.

6. The petition stands allowed.

(Arun Kumar, J)

N.H./-

AFR/NAFR	NAFR
CAV DATE	N/A
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