

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.31488 of 2014

Arising Out of Complaint Case No. -1012 Year- 2012 Thana – Chhatauni District-
EASTCHAMPARAN(MOTIHARI)

- =====
1. Dr. Shyam Sunder Prasad @ Madan Rai son of Rajendra Prasad Kushwaha
 2. Sanjay Kumar son of Rajendra Prasad Kushwaha
 3. Chittranjan @ Pappu @ Chittranjan Pd. Kushwaha son of Rajendra Prasad Kushwaha
 4. Sunaina Devi wife of Rajendra Prasad Kushwaha
 5. Rajendra Prasad Kushwaha @ Rajendra Prasad son of late Mahangu Mahto
1 to 5 are resident of village - Dhekha Mahua Tola (Uttari) P.S. Motihari
Muffasil, Distt. - East Champaran
 6. Chanda Devi Daughter of Shashi Kr. Sahani, resident of village - Aryasamaj
Chowk, P.S. Chhatauni, Distt. - East Champaran.
 7. Shashi Kumar Sahani son of late Shanker Sahani, resident of village - Sapahi,
P.S. Semra, District - West Champaran. Petitioner/s
- Versus
1. The State of Bihar.
 2. Sunita Devi wife of Shyam Sunder Pd. Madan Rai, D/o Rameshwar Pd.,
resident of village - Rajendra Nagar, P.S. Chhatauni, Distt. - East Champaran
.... Opposite Party/s
- =====

Appearance :

For the Petitioner/s : Mr. Rajesh Kumar, Advocate
For the Opposite Party/s : Mr. Dilip Kumar Tandan, Advocate
For the State : Mr. Vinod Shankar Modi, APP

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CORAM: HONOURABLE MR. JUSTICE SANJAY KUMAR

ORAL JUDGMENT

Date: 29-08-2017

Heard Mr. Rajesh Kumar, learned counsel for the
petitioners, Mr. Dilip Kumar, learned counsel appearing on behalf of the
opposite party no. 2 and Mr. Vinod Shankar Modi, learned Additional
Public Prosecutor representing the State.

2. This criminal miscellaneous application under section 482
of the Code of Criminal Procedure has been filed to quash the order
dated 17.05.2014 passed by the learned District and Sessions Judge,
Motihari, East Champaran in Criminal Revision No. 33 of 2013. Further



prayer has been made to quash the order dated 15.12.2012 passed by learned Judicial Magistrate, Motihari in Complaint Case No. 1012 of 2012 whereby and whereunder the learned Magistrate finding *prima facie* case for the offences under sections 323, 406 and 498A of the Indian Penal Code, summoned the petitioners.

3. The learned counsel for the petitioners submits that the complainant (opposite party no. 2) is not a legally married wife of petitioner no. 1 and so, no cognizance under section 498A and other sections of the Indian Penal Code could have been taken by the Court below. The petitioner no. 1 was married with one Babita Devi on 18.07.1997 and from the said wedlock, he has been blessed with two daughters. The opposite party no. 2 has wrongly asserted that she was married with the petitioner no. 1 on 05.05.2009. The real fact is that she was married with one Sumeshwar Kumar against whom she had filed a Complaint Case No. 195 of 2008 before the Chief Judicial Magistrate, Motihari, East Champaran for the offences under sections 498A, 406, 379 of the Indian Penal Code and section 3/4 of the Dowry Prohibition Act. In the said complaint case, she has asserted that from the said wedlock, she was blessed with a daughter and after birth of daughter, her husband tortured and she was ousted from her matrimonial house by her husband Sumeshwar Kumar. The opposite party no. 2 subsequently compromised the case with her husband Sumeshwar Kumar and their marriage was dissolved on mutual consent before the Lok Adalat in



Divorce Case No. 40 of 2009. There are enough materials to show that she was the wife of Sumeshwar Kumar. The learned Magistrate has passed the impugned order in mechanical manner without applying judicial mind and so, the same is fit to be quashed.

4. The learned counsel for the opposite party no. 2 as well as learned Additional Public Prosecutor opposed the submission.

5. A counter affidavit has been filed on behalf of the opposite party no 2 wherein it has been submitted that the opposite party no. 2 is legally married wife of petitioner no. 1. She had filed a Maintenance Case No. 448 of 2011 before the Principal Judge, Family Court, Motihari which on contest, was allowed. The learned Principal Judge after hearing both the sides, has observed that the opposite party no. 2 is legally married wife of petitioner no. 1. The learned Principal Judge has directed the petitioner no.1 to pay an amount of Rs. 5,000/- per month to the opposite party no. 2 for her maintenance besides cost of litigation to the tune of Rs. 10,000/-. The learned Court below on being satisfied with the material on record, has rightly taken cognizance and summoned the petitioners to face the trial.

6. On perusal of record it appears that the complainant, in her complaint petition, has specifically alleged that she was married with petitioner no. 1 on 05.05.2009 and from the said wedlock, she was blessed with a female child and after birth of female child, the petitioner started abusing and assaulting and lastly ousted the opposite party no. 2



from the matrimonial house. The complainant and her witnesses have supported the allegation of torture. It further appears that a maintenance case was filed by the opposite party no. 2 against her husband, which has been allowed as per judgment dated 05.09.2016 passed in Maintenance Case No. 448 of 2011. The learned Court below considering the materials on record, has taken cognizance against these petitioners as stated above. The defence of these petitioners that the opposite party no. 2 is not a wife of petitioner no. 1 and other grounds asserted in this criminal miscellaneous application will be considered at the time of trial. The learned Magistrate at the time of taking cognizance is required to see as to whether *prima face* case is made out against the accused or not and in this view of the matter, I do not find any illegality in the impugned order requiring any interference under inherent jurisdiction of this Court under section 482 of the Code of Criminal Procedure.

7. This criminal miscellaneous application is devoid of merit and the same is, accordingly, dismissed.

(Sanjay Kumar, J)

Mahesh/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	6.9.2017
Transmission Date	6.9.2017

