

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.32869 of 2016

Arising Out of PS.Case No. -1514 Year- 2014 Thana -BHABHU(KAIMUR) COMPLAIN C
District- BHABHUA (KAIMUR)

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Prabhakar Kumar Singh @ Prabhakar Singh, R/o Village-Lasarha, P.S.
Ramgarh, District- Kaimur.

.... Petitioner/s

Versus

1. State of Bihar
2. Smt. Hiramani Devi, wife of Prabhakar Kumar Singh, D/o Parsuram Singh, R/o Village-Lasarha, P.S.- Ramgarh, District- Kaimur (Bhabua)

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Ramakant Ram

For the Opposite Party/s : Mr. Sri S.M. Rahman

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CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH

ORAL ORDER

9 10-07-2017 Though, this matter has been listed under the heading
“For Orders (On Office Notes), but the matter is being heard on
merits.

Heard learned Counsels for the petitioner, informant
and learned APP for the State.

The petitioner being the husband of the complainant
is apprehending arrest in a complaint case wherein process has
been directed to be issued after cognizance being taken for the
offences punishable under sections 498A, 323, 504/34 of the
I.P.C. and Section 4 of the Dowry Prohibition Act.

Prosecution case as per the complaint case filed by
opposite party no.2, Hiramani Devi, is to the effect that she was



married to the petitioner in the year 2008 and, thereafter for some time, led a happy marital life. Subsequently, the demand of dowry was made by the petitioner, for pursuing his studies and on non-fulfillment of the same torture was inflicted. On 13/12/2014, the petitioner assaulted the opposite party no.2 and after snatching all the articles, he drove her out from the matrimonial house. Thereafter, the father of opposite party no.2 went to her matrimonial house and tried to pacify the issue, but the petitioner and others declined to reconcile the issue unless dowry demand is fulfilled. Consequently, considering the S.A. of the complainant and statement of the enquiry witnesses the order of cognizance was passed finding *prima facie* case under sections 498A, 323, 504/34 of the I.P.C. and Section 4 of the Dowry Prohibition Act.

It is submitted by learned Counsel for the petitioner that the petitioner has never been married with the Opposite Party No.-2. The opposite party no.2 was married with one Murah Singh Kushwaha in 2004 and subsequently out of the said wedlock, a child was born, but the husband of opposite party no.2 died in 2005. The opposite party no.2, happens to be within the prohibited degree of relationship with the petitioner, hence, the marriage between the petitioner and the informant was not possible. Moreover, the DNA matching report of the child with



opposite party no.2 and the petitioner suggests that the petitioner is not the biological father of the child in question. Hence, no case under section 498A of the IPC is made out against the petitioner.

Learned Counsel appearing on behalf of opposite party no.2 submits that marriage of the complainant was performed with the petitioner, but, subsequently, the petitioner deserted her and a child was born out of the wedlock.

Having heard learned counsel for the parties, it appears that vide order dated 21.11.2016, on the joint prayer of the parties for getting DNA of the child matched with the petitioner and the complainant, the matter was remitted back to the learned Court below for getting the DNA matching done through some reputed laboratory. The DNA matching report, dated 09/04/2017, transmitted by the Forensic Science Laboratory, Patna, reflects that that the petitioner is not the biological father of the child in question.

Considering the fact that the factum of marriage is seriously in dispute and the claim of the opposite party no.2 that the child was born out of the wedlock between petitioner and the informant gets negated by the DNA matching report transmitted by the FSL, let the above named petitioner be released on anticipatory bail, in the event of arrest or surrender before the



learned Court below within a period of 12 weeks from today, on furnishing bail bond of Rs.10,000/- (ten thousand) with two sureties of the like amount each to the satisfaction of the learned Chief Judicial Magistrate, Kaimur, in connection with Complaint Case No.1514/2014, subject to the conditions as laid down under Section 438(2) Cr.P.C.

Let the F.S.L report be sealed and remitted back to the authority concerned.

(Dinesh Kumar Singh, J)

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