

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.2259 of 2012

Arising Out of PS.Case No. -3 Year- 2011 Thana –Town Aurangabad District- AURANGABAD

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1. Sanjay Prasad S/o Nileshwar Prasad Resident of Village- Rajoie, Police Station- Muffasil, District- Aurangabad, at present resident of Mohalla- Gandhi Nagar, Police Station- Aurangabad Town, District- Aurangabad

2. Geeta Devi W/o Sanjay Prasad resident of Village- Rajoie, Police Station- Muffasil, District- Aurangabad, at present resident of Mohalla- Gandhi Nagar, Police Station- Aurangabad Town, District- Aurangabad

.... Petitioner/s

Versus

1. The State of Bihar

2. Kanchan Kumar W/o Dhanjay Prasad Resident of Village- Rajoie, Police Station- Muffasil, District- Aurangabad.

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Dr. Leelawati Kumari

For the Opposite Party/s : Mr. Amarendra Prasad, APP

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CORAM: HONOURABLE MR. JUSTICE SANJAY KUMAR

ORAL JUDGMENT

Date: 26-07-2017

This application under Section 482 of the Cr.P.C. has been filed to quash the order dated 16.06.2011 passed by the Chief Judicial Magistrate, Aurangabad in G.R. no. 27 of 2011 whereby and whereunder cognizance for the offence under Section 498-A of the Indian Penal Code was taken.

2. Heard the learned counsel for the petitioners and APP for the State.

3. It has been submitted that the complainant is residing with her husband. She has filed the present complaint case at the instance of her husband only to deprive the petitioners from the property which



was given in their share in family partition. The allegation of torture is omnibus against the petitioners. She has alleged that these petitioners committed theft of her house hold articles and ornaments. The court below without considering the materials on record, has taken cognizance under Section 498-A of the Indian Penal Code. There is absolutely no ingredient constituting an offence under Section 498-A of the I.P.C. and so the impugned order is fit to be quashed.

4. The learned APP, on the other hand, opposed the submissions.

5. On perusal of the F.I.R. and the impugned order, I find that the petitioner no. 1 is brother of the husband of complainant and petitioner no. 2 is wife of the petitioner no. 1. She has stated that her father-in-law being fed up with the conduct of the petitioners has partitioned the family property in three shares. She has alleged that the petitioners entered into her *Aangan* and dragged her. The allegation of abusing and assaulting appears omnibus. There appears property dispute between the parties. She has no grievance either against her husband or father-in-law. The O.P. no. 2 was noticed through both the process. The service report on record shows that the notice issued through *Nazarat* was personally served upon O.P. no. 2. But in spite of personal service of notice, she did not appear to controvert the submissions of the petitioners. The criminal



prosecution of these petitioners for property dispute appears to be bad and not sustainable in the eyes of law.

6. In the facts and circumstances of the case, the order dated 16.06.2011 passed by the Chief Judicial Magistrate, Aurangabad in G.R. no. 27 of 2011 is quashed and this Cr. Misc. application is allowed.

(Sanjay Kumar, J)

rohit/-

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	27.07.2017
Transmission Date	27.07.2017

