

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.2541 of 2014

Arising Out of PS.Case No. -108 Year- 2012 Thana -SHASTRINAGAR District- PATNA

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1. Sushant Nag S/O Sunil Kumar Ambasta

2. Smriti Nag D/O Sunil Kumar Ambasta

Both resident of Village- Naisarai, P.S.- Biharsharif, District- Nalanda

... Petitioner/s

Versus

1. The State of Bihar

2. Shipra Shareen D/O Sri Krishna Murari Sinha, resident of Shastri Nagar, North
A.G. Colony, Main Road, P.S.- Shastri Nagar, District- Patna

.... Opposite Party/s

with

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Criminal Miscellaneous No. 3060 of 2014

Arising Out of PS.Case No. -108 Year- 2012 Thana -SHASTRINAGAR District- PATNA

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1. Sunil Kumar Ambasta S/O Late B.P. Ambasta

2. Usha Bala, W/O Sunil Kumar Ambasta

Resident of Village- Naisarai, P.S.- Biharsharif, District- Nalanda

.... Petitioner/s

Versus

1. State Of Bihar

2. Shipra Shareen, D/O Sri Krishna Murari Sinha, Resident of Shastri Nagar, North
A.G. Colony, Main Road, P.S.- Shastri Nagar, District- Patna

.... Opposite Party/s

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Appearance :

(In Cr.Misc. No.2541 of 2014)

For the Petitioner/s : Mr. Salauddin Khan, Advocate.
Mr. Anujit Sinha, Advocate.

For the Opposite Party/s : Mr. Mukteshwar Dayal, A.P.P.
(In Cr.Misc. No.3060 of 2014)

For the Petitioner/s : Mr. Salauddin Khan, Advocate.
Mr. Anujit Sinha, Advocate.

For the Opposite Party/s : Mr. Mukteshwar Dayal, A.P.P.

For the O.P. No. 2 : Mr. Satyendra Prasad, Advocate.

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CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR

ORAL JUDGMENT

Date: 17-07-2017



As both the petitions are directed against the same impugned order taking cognizance dated 08.10.2014, so they are being disposed of by this common judgment.

3. Learned counsel for the petitioners is directed to make necessary correction in the prayer portion of the application during the course of the day.

4. Heard learned counsel for the parties.

5. Both these applications have been preferred initially for quashing the FIR, but in the meanwhile cognizance has been taken in this case so prayer is made for setting aside the order dated 08.10.2014 passed by Ms. Indrani Kisku, Judicial Magistrate, 1st Class in Trial No. 3365 of 2014 (arising out of Shastri Nagar P.S. Case No. 108 of 2012 dated 23.04.2012) by which she has taken cognizance under Sections 341, 323, 498A, 504 and 506/34 of the Indian Penal and issued summons to the accused persons.

6. Shipra Shareen, O.P. No. 2 has lodged Shastri Nagar P.S. Case No. 108 of 2012 dated 23.04.2012 under Sections 323, 341, 420, 498A, 504 and 506/34 of the Indian Penal Code and Sections 3/4 of the Dowry Prohibition Act, alleging therein that her marriage was solemnized on 08.12.2010. Dowry was given before marriage. After coming to matrimonial home, her marriage was not consummated by her husband as he did not like her and after few days, she returned



back to her parent's home. Her husband came back to her parent's home but again he returned back after two days without establishing any physical relationship. Further allegation is that after lapse of six months, all the accused persons, husband, father-in-law and mother-in-law, brother-in-law and sister-in-law put pressure upon her to bring Rs. 10 lacs from her parents for purchasing a flat and a Alto car. Later on, her husband disclosed that he is not capable of making physical relationship and only for getting dowry, he had solemnised marriage. It is also alleged that on 08.04.2012 all accused persons made an attempt to kill her by setting fire on her body but escaped away getting opportunity from matrimonial home.

7. Learned counsel for the petitioner submits that the petitioners are father-in-law, mother-in-law, brother-in-law and sister-in-law and allegation against them are omnibus and general in nature. Husband is not the petitioner in this case. He submits that after filing of the case, at the point of hearing of anticipatory bail application, compromise was reached between the parties accordingly they agreed to file a divorce suit on the basis of mutual consent and matrimonial Case No. 760 of 2012 earlier filed by O.P. No. 2 was withdrawn. He submits that in matrimonial Case No. 81 of 2013(Annexure-6), on the basis of mutual consent, decree of divorce was passed on 13.09.2013 after all claims finally settled in the matter including permanent



alimony; so the matter is finally settled between both sides and continuation of present criminal proceeding will be abuse of the process of court.

8. However, learned counsel appearing on behalf of the O.P. No. 2 submits that some expenses incurred during litigation were to be given by the husband but the same has not been paid.

9. Having considered the rival submissions and on perusal of record, the Court is of the view that full and final settlement reached between the wife and the husband as it is reflected from the judgment dated 13.09.2013 passed in Matrimonial Case No. 81 of 2013 with categorical finding that both parties agreed that they shall have no claim whatsoever against each other in future after the mutual divorce and neither party shall claim his/her share in personal or ancestral property of each other after divorce and wife/O.P. No. 2/ Shipra Shareen shall not claim any maintenance separately after grant of mutual divorce and also agreed to withdraw the present pending case Shastri Nagar P.S.Case No. 108 of 2012. Now, the matter has been finally settled between husband and wife in this circumstances continuation of present criminal proceeding would be abuse of process of the court. So, in this view of the matter, continuation of criminal proceeding including cognizance order dated 08.10.2014 passed in Trial No. 3365 of 2014/G.R. No. 1910 of 2012 arising out



Shastri Nagar P.S.Case No. 108 of 2012 is set aside. These petitions stand allowed.

(Arun Kumar, J)

Sujit/-

AFR/NAFR	NAFR
CAV DATE	
Uploading Date	28.07.2017
Transmission Date	28.07.2017

