

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.37328 of 2014

Arising Out of PS.Case No. -684 Year- 2010 Thana -VAISALI COMPLAINT CASE District-
VAISHALI(HAJIPUR)

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1. Md. Irfan Alam @ Md. Irfan Son of Late Md. Mahfooz Alam
2. Sarfaraz Alam @ Dulare Son of Late Md. Mahfooz Alam
3. NaiyaraParween @ Dulare Son of Late Md. Mahfooz Alam
4. Kamroon Wife of Late Md. Mafooz Alam All Resident of Mohammad Colony, Dargah Road, Near Pathar Ki Masjid, Police Station- Sultan Ganj, District- Patna.

.... Petitioners

Versus

1. The State of Bihar
2. Nikhat Jahan Daughter of Hafiz Mohammed Shamsuddin Resident of Village- Hasanpur Osti, Police Station- Mahua, District- Vaishali.

.... Opposite Parties

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Appearance :

For the Petitioners : Md. Abul Kalim

For the Opposite Party/s : Mr. Satyendra Narayan Singh(App)

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CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH
ORAL ORDER

4 13-09-2017

Heard Mr. Abul Kalim, learned counsel for the petitioners and Mr. Satyendra Narayan Singh, learned APP for the State.

The learned counsel for the petitioners, at the outset, submits that the opposite party no. 2 has already obtained a decree of divorce from the petitioner no.1 vide judgment dated 11.06.2012 passed by the learned Court of Principal Judge, Vaishali in Divorce case no. 70 of 2010. It is further submitted that after divorce, the opposite party no. 2 has also solemnized marriage however, with ulterior motive, the opposite party no. 2



had filed the connected complaint case no. 684 of 2010 wherein, cognizance was taken by an order dated 28.08.2010 by the learned Sub Divisional Judicial Magistrate, Vaishali. Thereafter, the petitioners are said to have filed a discharge petition before the court of learned Sub Divisional Judicial Magistrate, Vaishali under Section 245 of Code of Criminal Procedure. The learned S.D.J.M., Vaishali by an order dated 18.02.2014 has been pleased to dismiss the discharge petition filed by the petitioners under Section 245 of Code of Criminal Procedure. The said order dated 18.02.2014 is under challenge before this Court.

The learned counsel for the petitioners has further submitted that as far as the opposite party no. 2 is concerned, she had obtained divorce as far back as in the year 2012 however, the said issue has not been considered by the learned Sub Divisional Judicial Magistrate, Vaishali. It is next submitted that the opposite party no. 2 has also solemnized marriage in the year 2015. Another aspect of the matter is that despite valid service of notice on opposite party no. 2 and she, being represented by her advocate, no interest has been taken to attend the present case, inasmuch as on the previous occasion as well, neither the opposite party no. 2 nor her counsel was present and today also, there is no representation on behalf of the opposite party no. 2.



From the record as well as submissions of the learned counsel for the petitioners, I find that the subsequent events, which are of vital importance, have not been considered by the learned Sub Divisional Judicial Magistrate, Vaishali while dealing with the discharge petition under Section 245 of Code of Criminal Procedure.

Accordingly, I deem it fit and appropriate to set aside the order dated 18.02.2014 passed by the learned Sub Divisional Judicial Magistrate, Vaishali in complaint case no. 684 of 2010 and remit the matter back to the learned Sub Divisional Judicial Magistrate, Vaishali for fresh adjudication after taking into account the aforementioned issues taking on record all evidences and considering other issues which may be raised by the parties before him.

It is made clear that the present order may not be construed as order on the merits of the case.

The petition is allowed to the aforesaid extent.

(Mohit Kumar Shah, J.)

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