

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.26807 of 2012

Arising Out of PS.Case No. -175 Year- 2006 Thana -null District- PATNA

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1. Krishna Kumar Mishra
 2. Krishna Devi @ Krishna Devi Mishra
 3. Rakesh Kumar Mishra
 4. Ramesh Kumar Mishra @ Ramesh Prasad Mishra
 5. Dinesh Kumar Mishra @ Dinesh Mishra
 6. Awadh Shukla
 7. Sangeeta Devi @ Sangeeta Mishra

.... Petitioner/s

Versus

State of Bihar & Anr

.... Opposite Party/s

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Appearance :

For the Petitioner/s	:	Mr. Shiv Kumar Dwivedi, Advocate
For the State	:	Mr. Anish Chandra, APP
For the Opposite Party	:	Mr. Satyendra Prasad, Adv.

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CORAM: HONOURABLE MR. JUSTICE SANJAY PRIYA

ORAL JUDGMENT

Date: 01-08-2017

1. This petition has been filed for quashing the impugned order dated 06-01-2012 passed by the Court of learned Additional Sessions Judge-VI, Patna in Sessions Trial No. 175 of 2009 by which and whereunder, the learned Additional Sessions Judge-VI, Patna has on the petition filed by the petitioners u/Ss 227 & 228 of the Cr. P.C. remitted back the case to the learned Chief Judicial Magistrate holding that no case u/S 307 of the Indian Penal Code is made out and in facts and circumstances of the case, offence under Sections-448, 498(A), 494/34 of the Indian Penal Code is made out against the petitioners.

2. Counsel for the petitioners has submitted that petitioner Nos. 1 and 2 are parents-in-law petitioner Nos. 4 & 5 are Bhaujai and petitioner Nos. 6 & 7 are Nanads, petitioner No. 3 is husband of the



complainant. It has also been submitted on behalf of petitioners that divorce has taken place between both husband and wife with mutual consent u/S 13(b) of Hindu Marriage Act and decree of divorce has also been passed by order dated 27-8-2009 on the basis of compromise, which is annexed as Annexure-3 to this petition and the compromise petition was made part of the decree.

3. Counsel for opposite party No. 2 has appeared. He has submitted that the alleged occurrence of torture has been committed with the complainant prior to the divorce and therefore, in the aforesaid period, the husband and other co-accused cannot be exonerated. He has relied upon a decision of this court reported in **2017(3) PLJR 24 (Mukesh Kumar & Ors. Vs. The State of Bihar & Anr.)** in support of his submission. The opposite party No. 2 has submitted that after decree of divorce, the wife has performed another marriage and she has also given birth to two children. Counsel for opposite party No. 2 has submitted that this falsifies the allegation, made against the complainant by her husband that she could not bear child. The counsel for the petitioners has submitted that husband has also performed another marriage and is leading conjugal life.

4. In such circumstances, on the basis of allegation made in the complaint and also the fact that both parties have performed marriage and are living separately, this court is of the view that continuance of criminal proceeding against petitioner Nos. 1, 2 and 4 to 7 is mere harassment to them and an abuse of the process of law.



They are family members of husband of the complainant and in fact, they have no concern with the family affairs of husband and wife.

5. Therefore, the impugned order passed in respect of petitioner Nos. 1, 2 and 4 to 7 are quashed. So far impugned order with regard to petitioner No. 3 is concerned, since the alleged occurrence is said to have taken place prior to the divorce having taken place between the parties with mutual consent, he cannot be exonerated from such allegation.

6. In such circumstances, this criminal miscellaneous petition is disposed off with direction to petitioner No. 3 and the complainant to appear in the court below and file petition that they have taken divorce with mutual consent and have remarried and on filing such petition, the court below will pass appropriate order expeditiously in accordance with law. Both parties are directed to appear in the court below and file such petition within a period of three months from the date of receipt of this order in the court below.

7. Accordingly, this Cr. Misc. Application is allowed in part.

(Sanjay Priya, J)

A.K.V./-

AFR/NAFR	NAFR
CAV DATE	
Uploading Date	21-08-17
Transmission Date	21-08-17

