

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.45471 of 2016

Arising Out of PS.Case No. -100 Year- 2016 Thana -MUFFASIL District-
WESTCHAMPARAN(BETTIAH)

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Yaswinder Prasad @ Yaswant

.... Petitioner/s

Versus

State of Bihar & Anr

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Brij Kishor Mishra, Adv.

For the State : Mr. J. N. Thakur, APP

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CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH

ORAL ORDER

8 10-07-2017

Heard learned Counsels appearing on behalf of the petitioner, informant and Mr. J. N. Thakur, for the State.

The petitioner is apprehending arrest in a case registered for the offences punishable under Sections 498A, 493, 376, 420, 467, 468,471, 120B, 323, 380,504/34 of the I.P.C. and sections 3/4 of the Dowry Prohibition Act, though, on conclusion of investigation, the final form (charge-sheet) was submitted under section 498A of the I.P.C. and sections 3/4 of the Dowry Prohibition Act.

The prosecution case, as per the written report submitted by O.P.No.2, on 06/03/2016, before the Officer In-charge, Manuapul, West Champaran, is to the effect that she was married with the elder brother of the petitioner namely, Rabindra



Kumar, on 22/02/2010, but after the marriage torture was inflicted for non-fulfillment of dowry demand. It is further alleged that her husband Rabindra Kumar had illicit relationship with some lady teacher. On protest being made, the Opposite Party No.2 was driven out from the matrimonial house after snatching her jewellery and other articles. The in-laws of the informant persuaded her to get married with the petitioner Yaswinder Prasad @ Yaswant as a result, on promise of marriage, the petitioner established physical relationship with the informant, against her wishes. The petitioner then took the informant to Nautan Circle Office and got the residential certificate prepared and thereafter she was taken to Bettiah for getting the marriage registered and there an affidavit was prepared to that effect but the same was converted into affidavit to the effect that both are unmarried. The informant claims that in fact in the said affidavit, it was mentioned that opposite party no.2 and the petitioner got married on 16/03/2013. It is further alleged that on 18/03/2015, co-accused, Lal Babu Prasad, the father-in-law of the opposite party no.2 entered her room and tried to outrage her modesty, when the informant informed the petitioner then the petitioner came to her parent's house. Thereafter, on 10/02/2016, the petitioner went to the parent's house of the informant /opposite party no.2 and tried



to establish physical relationship with her and in spite of protest, he forcefully established physical relationship. Thereafter, the petitioner assaulted and snatched her 'mangalsutra'(jewellery). On the basis of the abovementioned accusation Bettiah Muffasil (Manuapul) P.S. Case No.100/2016 was registered.

It is submitted by learned Counsel appearing on behalf of the petitioner that the petitioner is the younger brother of the husband of the informant/ opposite party no.2. The petitioner was never married with the informant. The informant / opposite party no.2 initially filed Complaint Case No. 1711C/2011 against her husband Ravindra Kumar and others, wherein, vide order dated 29/06/2012, passed by the learned Magistrate cognizance was taken under section 498A of the I.P.C. and sections 3/4 of the Dowry Prohibition Act, which was challenged by the husband and other in-laws family members of opposite party no.2 in Criminal Miscellaneous No.34020 of 2012, wherein, it was submitted on behalf of the informant / opposite party no.2 that she has solemnized marriage with this petitioner and they are leading happy life. In the aforesaid proceeding, this petitioner was neither made party nor was he noticed, when on unilateral submission on behalf of the informant that she does not want to prosecute her first husband, the order of cognizance, passed in Complaint Case



No. 1711C/2011, was quashed. However, it was submitted on behalf of the husband of opposite party no.2 that he has filed Matrimonial Suit No. 195 of 2011 with a prayer for divorce, with allegation of adulterous relationship between opposite party no.2 and the petitioner. Hence, it is submitted that even considering the aforesaid submission of the husband of the informant, during the hearing of quashing application, the marriage of the informant with this petitioner cannot be reasonably interfered. Moreover, there is nothing on record to show that the informant's marriage with Ravindra Kumar got dissolved. Hence, on this score also the marriage between the petitioner and the informant cannot be treated to be valid one.

It is further submitted by learned counsel for the petitioner that when the order taking cognizance passed in Complaint Case No.1711C/2011 was quashed vide order dated 09/04/2015, passed in in Criminal Miscellaneous No.34020 of 2012, then the present FIR was registered on 07/03/2016. Moreover, the informant filed Maintenance Case No. 254 of 2011 before the Principal Judge, Family Court, Bettiah against her husband Ravindra Kumar, wherein she deposed on 22/06/2013, her deposition has been brought on record by way of Annexure-7, which does not suggest that the informant has whispered a word



about her relationship or marriage with this petitioner. Above all, on conclusion of investigation, the accusation has not been found true under sections 376, 420, 467, 468, 471,380 of the I.P.C. However, the final form (charge-sheet) has been submitted under section 498A of the I.P.C. and section 3/4 of the Dowry Prohibition Act.

It is submitted by learned Counsel appearing on behalf of the informant / opposite party no.2 that the informant though, was initially married with the brother of the petitioner, namely Rabindra Kumar, but when he deserted her then the in-laws persuaded her to marry this petitioner and on that pretext that physical relationship was established by the petitioner with the informant. Consequently, they started residing as husband and wife. During the hearing of the quashing application, the entire in-laws supported the factum of marriage of the informant with this petitioner. However, the informant being a lady does not have any proof with regard to marriage and admittedly the marriage of the informant with petitioner's brother Ravindra Kumar has never been dissolved. Above all, the informant, at present, is not capable to maintain herself.

Considering the rival submissions of the parties, keeping in view the fact that the marriage between the petitioner



and the informant is in dispute, admittedly the marriage of the informant with the brother of the petitioner has not been dissolved and so far as, the physical relationship between the petitioner and the informant and other collateral accusations are concerned, on conclusion of investigation, the accusation has not been found under sections 376, 420, 467, 468, 471, 120B, 380 and 323 of the Indian Penal Code true and final form (charge-sheet) has already been submitted only under section 498A of the Indian Penal Code and section 3/4 of the Dowry Prohibition Act. *Prima facie*, at present, since marriage between the petitioner and the informant is in dispute and this is not in dispute that the petitioner was neither a party nor heard in Criminal Miscellaneous No.34020 of 2012, filed by the husband of the informant. Above all, the informant filed Maintenance Case No. 254 of 2011, wherein she claims to have married the brother of the petitioner but she did not whisper a word about the relationship with this petitioner, let the petitioner above named 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, Bettiah, West Champaran, in connection with Mufassil (Manuapul)



Police Station Case No.100 of 2016, subject to the conditions as laid down under Section 438(2) Cr.P.C.

However, any observation made in the present order will not be taken into account during trial which may prejudice either party. The present order will not further prejudice the informant in pursuing the Maintenance Suit No. 254 of 2011 including any claim arising out of the matrimonial relationship between the informant and her husband Ravindra Kumar.

(Dinesh Kumar Singh, J)

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