

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.38110 of 2014

Arising Out of PS.Case No. -406 Year- 2013 Thana -BUXAR COMPLAINT CASE District-
BUXAR

- =====
1. Arvind Kumar
 2. Bablu Prasad Srivastava @ Ajeet Kumar Sinha
 3. Pawan Kumar @ Pawan Prasad Srivastava
 4. Rahul Kumar @ Rahul Prasad Srivastava
 5. Dolly Kumari

Brij Kumar Prasad Srivastava is the father of all the five petitioners

6. Brij Kumar Prasad @ Brij Kumar Prasad Srivastava, son of late Shyamalanand Lal.
7. Girija Devi, wife of Brij Kumar Prasad Srivastava

All resident of Civil Line (Near Sub Jail) Buxar, P.S.- Buxar District- Buxar.

.... Petitioner/s

Versus

1. State of Bihar
2. Soni Kumari @ Anita Kumar, wife of Arbind Kumar, D/o Ashok Kumar Srivastava, resident of Civil Line (Near Sub Jail) Buxar, P.S.- Buxar District- Buxar.
3. Ashok Kumar Srivastava, son of late Rajiv Ranjan Prasad, resident of village- + P.O- Unwash, P.S.- Itarhi, District- Buxar.

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Dileep Kumar Jha, Advocate
Mr. Amit Shanker, Advocate.

For the Opposite Party/s :

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CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR

ORAL JUDGMENT

Date: 04-08-2017

Heard learned counsel for the petitioner and the learned

A.P.P. None appears on behalf of the opposite parties.

2. The petitioners are accused in Complaint Case No. 406(C) of 2013. In the said case, the Sub Divisional Judicial



Magistrate, Buxar has taken cognizance of offence under Section 498A of the Indian Penal Code and Section 4 of the Dowry Prohibition Act by order dated 19.05.2014. The petitioners seek indulgence to set aside the cognizance order as no *prima facie* case under said section is made out.

3. Learned counsel for the petitioners submits that in fact marriage was never consummated since its solemnization and she also deserted her husband. The marriage with the petitioner was fixed by her father, however, she was in love relationship with other person, on these grounds, a divorce suit was filed by the husband, being Divorce Suit No. 6 of 2012, and in the said suit, wife appeared and admitted the allegation and also gave consent for passing of divorce decree and accordingly, the judgment was passed on 21.03.2013 allowing divorce consequently decree was prepared on 03.04.2013, thereafter this present complaint has been filed on 01.05.2013. He further submits that prior to filing of the present complaint, her father also filed two complaint cases being Complaint Case No.607(C) of 2012 under Sections 498A of the Indian Penal Code and Sections 3/4 of the Dowry Prohibition Act and Complaint Case No. 27(C) of 2013 under Sections 304-B of the Indian Penal Code though she appeared before the investigating agency and the case was dropped.

4. Having considered submissions, the Court is of the view



that continuation of the present criminal proceeding would be abuse of the process of the court for the reason that prior to filing of the present case, a divorce decree was passed and in the said proceeding the wife-complainant appeared and consented for divorce and accepted the settlement made by the husband and the same is reflected from the judgment passed therein. So, for the aforesaid reason, the entire criminal proceeding including cognizance order dated 19.05.2014 passed in Complaint Case No. 406(C) of 2013 pending in the court of learned Sub Divisional Judicial Magistrate, Buxar is hereby quashed. The application stands allowed.

(Arun Kumar, J)

Sujit/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	11.08.2017
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