

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.38342 of 2017

Arising Out of PS. Case No.-29 Year-2016 Thana- KUNALI District- Supaul

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1. Chandan Pandit, son of Sri Bachchu Pandit, Resident of Village- Bathnaha, P.S.- Kunauli, District- Supaul.
 2. Shrawan Pandit, son of Sri Fani Lal Pandit @ Fani Pandit, Resident of Village- Hulash, P.S.- Raghapur, District- Supaul.

... .. Petitioner/s

Versus

1. The State of Bihar.
2. Neelam Devi, Wife of Sri Chandan Pandit, Resident of Village- Bathnaha, P.S.- Kunauli, District- Supaul. at present D/o Bindeshwar Pandit, resident of Village- Chanail Maricha, P.O.- Bakaun Via Sukhpur, P.S. and District- Supaul.

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Amrit Abhijat
For the Opposite Party/s : Mr. J.N. Thakur, APP

CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH
ORAL ORDER

5 24-11-2017 Heard learned counsels for the petitioners and the learned
APP for the State. However, none appears for O.P. No. 2.

This Court, vide order dated 19.8.2017, directed for issuance of notice to O.P. No. 2 by ordinary post as well as by registered cover.

Office note dated 30.10.2017 reflects that the ordinary process of notice was received by the mother of O.P. No. 2 after having telephonic conversation with O.P. No. 2 while the registered cover notice returned unserved with the process server's report that after performing second marriage, O.P. No. 2 has shifted somewhere. Consequently, vide order dated



31.10.2017, this Court directed the petitioner to file affidavit with regard to the jointness of O.P. No. 2 with her mother. Thereafter, the matter was taken up on 17.11.2017. This Court considered I.A. No. 2356 of 2017 wherein prayer has been made to treat the service of notice as deemed valid service as O.P. No. 2 is joint with her mother and accordingly, the notice issued to O.P. No. 2 was treated as deemed valid service. Even today, none appears for the O.P. No. 2.

In the circumstances, this application is heard on merits since it is pending before this Court since 10.8.2017.

The petitioner no. 1, being the husband of the informant and petitioner no.2 being the maternal uncle of petitioner no. 1, are apprehending arrest in a case registered for the offences punishable under sections 341,323,498A,494 and 504/34 of the Indian Penal Code and Sections 3 and 4 of the Dowry Prohibition Act.

The prosecution case got initiated with the written report submitted by the O.P. No. 2 Neelam Devi to SHO, Kunauli Police Station to the effect that the marriage of petitioner no. 1 with O.P. No. 2 was solemnized in the year 2012. Consequently, the informant O.P. No. 2 came to her matrimonial house with petitioner no. 1, but thereafter a demand of motorcycle,



television and milching buffalo was made and O.P. No. 2 was subjected to torture. It is alleged against petitioner no. 2, being maternal uncle of petitioner no. 1, to have presurized the informant of having illicit physical relationship with him. When the informant conveyed her grievance to her mother-in-law about unbecoming behaviour of petitioner no. 2, then the informant was brutally assaulted. It is also alleged that petitioner no. 1 subsequent to performing second marriage with the informant, performed other marriage, thereafter the informant came to her parents' house. Subsequently, the accused persons came to the parent's house of O.P. No. 2 and assaulted her father, leading to registration of the present case.

It is submitted by learned counsel for the petitioners that the petitioner no. 1 admits his marriage with informant O.P. No. 2 on 12.2.2012. After the marriage the informant spent about ten days but she gave birth to a male child on 13.8.2012, within five months of the marriage though the petitioner after ten days of marriage, went to Punjab to earn livelihood. Thereafter the petitioner no. 1 filed Matrimonial Suit No. 23 of 2015 with a prayer for divorce before the Principal Judge, Family Court, Supaul on 11.6.2015 wherein specific pleading was made for determination of DNA of the child, but that was not done since



the informant did not agree to the same, and much after that, the present FIR was registered on 6.6.2016 in retaliation to the matrimonial suit, wherein the informant had appeared. It is further submitted that the informant has performed second marriage which gets reflected from the service report of the process server dated 30.10.2017. Statement has been made in paragraph 11 of the petition that the petitioner has not performed second marriage which reads as follows:

“That allegation to marry of 2nd time is denied, petitioner No. 1 comes from a marginally literate class of society, was not aware that a proper divorce has to be taken from family court prior to solemnizing marriage with another girl. This mistake has been committed by him but honestly and innocently he has admitted it in paragraph 11 of divorce petition (Annexure-2).”

Considering the fact that the matrimonial life of the petitioner no. 1 and informant, became estranged soon after marriage, the informant chose not to appear in spite of valid service of notice and the matrimonial suit being filed prior to the registration of the present FIR, let the petitioners above named be released on anticipatory bail in the event of arrest or surrender within 12 weeks on furnishing bail bond of



Rs.10,000/- (ten thousand) each with two sureties of the like amount each to the satisfaction of the learned SDJM, Birpur, Supaul in connection with Kunauli P.S. Case No.29 of 2016.

(Dinesh Kumar Singh, J)

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