

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.49974 of 2013

Arising Out of PS.Case No. -491 Year- 2013 Thana -SITAMARHI District- SITAMARHI

- =====
1. Gopal Krishna, son of Chandra Kishore Singh, resident of village- Parsarma (wrongly described as Parasrama in Complaint Petition/F.I.R.), P.S.- Supaul, District- Supaul

.... Petitioner/s

Versus

1. The State of Bihar &
2. Pooja Kumari, D/O Ramadhar Prasad, resident of Ward No. 15, Mohalla- Kot Bazar, Sitamarhi Town, P.S.- Sitamarhi, District- Sitamarhi

.... Opposite Party/s

=====

Appearance :

For the Petitioner/s : Mr. Ashhar Mustafa, Advocate

For the Opposite Party No.1: Dr. Rabindra Kumar, APP

For the Opposite Party No.2: Ms. Madhubala Verma, APP

=====

CORAM: HONOURABLE MR. JUSTICE SANJAY PRIYA

ORAL JUDGMENT

Date: 28-06-2018

This application under Section 482 of the Code of Criminal Procedure has been filed for quashing the First Information Report of Sitamarhi P.S. Case No.491 of 2013 instituted under Section(s) 363, 366-A, 467, 468, 376, 342, 506, 509/34 Indian Penal Code.

2. Counsel for the Petitioner has submitted that this is a case of malicious prosecution. Marriage between the Petitioner and the Opposite Party No.2 was performed on 30.06.2012. Their marriage was inter-caste marriage and the parents of the Opposite Party No.2 were not ready to allow the Opposite Party No.2 to live



with the Petitioner. The Petitioner has filed a case for restitution of conjugal rights on 10.12.2012 vide Matrimonial Case No.174 of 2012 before the Principal Judge, Family Court, Saharsa, in which notice was issued to the Opposite Party No.2 on 30.01.2013. Thereafter, instant complaint was filed by the Complainant on 20.04.2013. Thereafter, surprisingly, on 22.04.2013, the Complainant herself filed a petition in the Court below that she did not want to pursue the Complaint. Since the Complaint was already sent under Section 156(3) Cr. P. C., no action was taken. The police, ultimately, after investigation submitted charge-sheet against the Petitioner in the case and the Court below after looking into the charge-sheet and other materials available in the case diary took cognizance against the Petitioner by order dated 19.05.2015. Counsel for the Petitioner has further submitted that both parties are adult and they have voluntarily entered into marriage, but due to pressure of the family of the Opposite Party No.2, they could not live as husband and wife. The Petitioner is still ready to keep the Opposite Party No.2 as his wife.

3. Counsel for the Opposite Party No.2 submits that Opposite Party No.2 is living in her maternal home with her parents. There was no marriage between the Petitioner and Opposite Party No.2. The Petitioner on false assurance took her to different



places including Delhi and also sexually exploited her. The Petitioner forced her to join the Institute, which was run by this Petitioner. The Petitioner also took nude photograph of the Complainant and gave threat to destroy her reputation.

4. Initially, counsel for the Petitioner made submission before this Court to send this matter to Patna High Court Mediation and Conciliation Centre as both the parties want to settle the matter by withdrawing the cases filed by each other.

5. This Court after hearing submission of both the parties and looking into the allegation made in the written report and also various Annexure enclosed with the petition, mainly, Annexure-3, 4 and 5, finds that there was some relationship between the Petitioner and Opposite Party No.2 and they knew each other. In the Complaint Petition filed by the Complainant, there is allegation made by the Complainant that he took the Complainant to various places and also sexually exploited her after inducing her to join the Institute run by him.

6. This Court has also looked into the Supplementary Affidavit filed by the Petitioner, which shows that one case for restitution of conjugal right was filed vide Matrimonial Case No.174 of 2012, which is still pending.

7. During pendency of this application, one



Interlocutory Application bearing Interlocutory Application No.726 of 2016 has been filed on behalf of the Petitioner stating therein that investigation has, now, been completed and charge-sheet has been submitted against the Petitioner for the offence under Section(s) 363, 366, 467, 468, 342, 506, 509 Indian Penal Code and cognizance has also been taken against the Petitioner under the aforesaid counts.

8. This Court after going through the impugned order finds that the Court below after looking into the charge-sheet submitted by the police and the materials available in the case diary has taken cognizance against the Petitioner. It further appears that police after investigation did not sent up other accused, as named in the First Information Report, and has submitted charge-sheet only against this Petitioner. Defence of the accused cannot be looked into at the stage of cognizance.

9. Counsel for the Petitioner on the basis of Annexure-3, 4, 5 as well as 9, 10, and 11 has submitted that this case is fit to be quashed as it is malicious prosecution because the Complainant has filed the complaint case after filing of the case by the Petitioner against the Opposite Party No.2 under Section 9 of the Hindu Marriage Act for restitution of conjugal rights.

10. This Court is not inclined to look into disputed



question of facts in the instant proceeding under Section 482 Cr. P.
C. All these defence can properly be looked into by the Trial Court
at the appropriate stage.

11. Therefore, this Court is not inclined to interfere
with the F.I.R. as well as the order of cognizance passed by the
learned Court below.

12. This application is, accordingly, **dismissed**.

13. However, both the parties are at liberty to file
necessary petition in the Court below at appropriate stage stating
the facts as mentioned in the instant application, which shall be
disposed off by the Court below in accordance with law without
being prejudiced by this order.

(Sanjay Priya, J)

J.Alam/-

AFR/NAFR	AFR
CAV DATE	N/A
Uploading Date	16-07-2018
Transmission Date	16-07-2018

