

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.43697 of 2013

Arising Out of PS.Case No. -32 Year- 2012 Thana -KATIHAR COMPLAINT CASE District-
KATIHAR

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1. Binod Malakar Son of Rajendra Prasad Resident of Village - Vidya Nagar,
Brahman Tola, P.S. - Katihar Sahayak, District - Katihar

2. Shobha Devi @ Fekani Devi Wife of Binod Malakar Resident of Village - Vidya
Nagar, Brahman Tola, P.S. - Katihar Sahayak, District - Katihar

3. Raj Kumar Malakar @ Munna Kumar Malakar Son of Binod Malakar Resident
of Village - Vidya Nagar, Brahman Tola, P.S. - Katihar Sahayak, District - Katihar

.... Petitioner/s

Versus

1. The State of Bihar

2. Kumari Veena Daughter of Sudhir Malakar Resident of Village - Chakla Maula
Nagar, P.S. - Falka, District - Katihar

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Bimal Kumar

For the Opposite Party/s : Mr. Shakir Ahmad, A.P.P.

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CORAM: HONOURABLE MR. JUSTICE ARVIND SRIVASTAVA

C.A.V. JUDGMENT

Date: 14-03-2018

Heard learned counsel for the petitioners and the
State.

2. Petitioners, by means of this application under
section 482 of the Code of Criminal Procedure, have invoked the
inherent jurisdiction of this Court with prayer to quash the order dated
02.08.2012 passed by the learned Judicial Magistrate, 1st Class,
Katihar in C.A. Case No. 32 of 2012, whereby cognizance has been
taken against the petitioners for the offence under section 498A of the
Indian Penal Code and issued process against them.



3. Submission of learned counsel for the petitioners is that petitioners, who are father-in-law, mother-in-law and husband of the complainant respectively, have falsely been implicated in the present case. As a matter of fact, no offence against the petitioners is disclosed and the present prosecution has been instituted with *mala fide* intention for the purposes of harassment. The alleged marriage was solemnized on 22.11.2009. After one month of the marriage, the complainant left her Sasural. When petitioner no.3/husband was going to his Sasural for Bidagiri of the complainant, he met with an accident and sustained severe head injury. He became senseless and was admitted in K.M.C.H., Katihar, fromwhere he was referred to Sadar Hospital, Purnea and thereafter, to Paramount Hospital, Siliguri.

4. Further, learned counsel for the petitioners submits that somehow life of the husband of the complainant was saved but due to accident, his face and right leg got badly damaged, which is evident from Annexure-2. It is further submitted that while the husband of the complainant was under treatment and was fighting for his life, the complainant on her own left the matrimonial house and deserted her husband.

5. Learned counsel further submits that petitioners are always ready keep the complainant with full honour and dignity. But it is the complainant, who does not want to live with her husband. As



a matter of fact, for restitution of conjugal relations with the complainant, the petitioner no.3 had also filed Matrimonial Suit No. 446 of 2012 before the Family Court, Katihar (Annexure-4). It is further relevant to mention that while the anticipatory bail petition of these petitioners were being heard, the learned Sessions Judge tried his best to reconcile the dispute, but the opposite party no.2 flatly refused to live with her husband, as is evident from the order of the learned Sessions Judge, contained at Annexure-5. Further, on perusal of Annexure-6 to the supplementary affidavit, it appears that since 02.06.2015 neither the complainant nor her lawyer is appearing before the Court below.

6. In this case, notices were issued to the opposite party no.2, but she refused to take notice and as such, this Court vide order dated 17.11.2014 accepted the service of notice as valid.

7. It is also submitted that the complainant has already solemnized her second marriage and she is not appearing either before this Court or before the Court below and as such, these petitioners may be acquitted as provided under section 256(1) Cr. P.C.

8. In view of the above submissions, learned counsel prays for quashing of the order taking cognizance.

9. Considering the facts and circumstances of the case, the materials available on records and the submissions advanced on



behalf of the parties, it is found that the submissions advanced on behalf of the petitioners have substance and I agree with the same. In view of the fact that the complainant/opposite party no. 2 has not appeared before this Court despite service of notice and she is also not appearing before the Court below since 02.06.2015, this Court feels that the continuance of the present prosecution against the petitioners, who are father-in-law and mother-in-law and husband respectively, will be an abuse of process of the Court. Accordingly, the order taking cognizance dated 02.08.2012 passed by the learned Judicial Magistrate, 1st Class, Katihar in C.A. Case No. 32 of 2012, is, hereby, quashed.

10. Accordingly, the application stands allowed.

(Arvind Srivastava, J)

Shailendra/-

AFR/NAFR	NAFR
CAV DATE	30.10.2017
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