

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.5153 of 2016

Arising Out of PS. Case No.-831 Year-2008 Thana- BHAGALPUR COMPLAINT CASE
District- Bhagalpur

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1. Md. Mumtaj @ Pappu @ Mumtaj Mansuri, Son of Md. Moinuddin.
2. Mohiuddin Mansuri @ Md. Moinuddin, Son of Late Dost Mohammad.
Both residents of Mohalla-Paras Toli, P.S.-Doranda, District-Ranchi, State-Jharkhand.

... .. Petitioner/s

Versus

1. State Of Bihar.
2. Bibi Nasrin, Wife of Md. Mumtaj, daughter of Taiyab Ali, resident of Village-Bansitkar, P.O.-Juchow, P.S.-Sabour, District-Bhagalpur, State-Bihar.

... .. Opposite Party/s

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Appearance :

For the Petitioner/s : Mr.Ajit Kumar Singh, Adv
For the Opposite Party/s : Mr.Dashrath Mehta, APP

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CORAM: HONOURABLE MR. JUSTICE BIRENDRA KUMAR
ORAL JUDGMENT

Date : 10-07-2019

Heard counsel for the parties.

2. Petitioners are accused in Complaint Case No.831 of 2008 brought by opposite party No.2-Bibi Nasrin. By order dated 25.02.2010, the learned court below took cognizance and issued process against the petitioners to face trial for offence under Section 498A I.P.C. The petitioners are husband and father-in-law of opposite party No.2. There is allegation of demand of dowry and torture for the same since 16.04.2006 till the filing of the complaint petition. On 16.04.2006 marriage was solemnized on Dain Mehar of Rs.31,000/-, however, the petitioners and others started pressurizing against non-fulfillment of dowry demand



which resulted in torture by the accused person to opposite party No.2.

3. The challenge is on the ground that before Islahiya Committee divorce was already affected on 28.04.2008 and the Committee directed to assess the dain and expenses of the period of iddat and to pay the same through cheque. Thereafter, the husband obtained an ex parte decree of divorce on 08.08.2012 in Matrimonial Suit No.09 of 2007 from the court of learned Principal Judge, Family Court, Ranchi.

4. Contention is that since there was no relationship of husband and wife, there cannot be any claim of illegal demand and torture for the same. Hence, criminal prosecution of the petitioner is abuse of the process of the court.

5. The petitioners had challenged the cognizance order in Cr. Revision No.173 of 2010 before the learned District Judge, Bhagalpur and the matter was heard by learned Additional District Judge-VI, Bhagalpur who dismissed the revision application considering the material on the record especially the deposition of witnesses examined during enquiry under Section 202 Cr.P.C. The learned Sessions Judge observed that the probable defence cannot be considered at this stage nor the consideration would be the



inherent probability appearing in the complaint and the evidences produced in support of the same.

6. In my view also, grant of ex parte decree of divorce subsequent to the filing of the complaint case would not deface/erase the prima facie allegation made in the complaint case. Hence, this application has got no merit.

7. Accordingly, this application stands dismissed.

(Birendra Kumar, J)

Nitesh/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	13.07.2019
Transmission Date	13.07.2019

