

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.30033 of 2017

Arising Out of PS. Case No.-69 Year-2016 Thana- BELAGANJ District- Gaya

1. Vivek Kumar son of Virendra Singh
2. Virendra Singh son of Late Gori Shanker
3. Bajanti Devi w/o Virendra Singh All resident of Village- Nimchak, P.S. Belaganj, District Aurangabad.

... .. Petitioner/s

Versus

1. State Of Bihar
2. Sushma Devi wife of Late Senapati Kumar resident of Village- Sahopur, P.S. Tekari District Gaya.

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Bindeshwar Prasad Singh
For the Opposite Party/s : Mr. Satyaveer

CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR JHA
ORAL ORDER

12 08-05-2019 Heard both sides.

The petitioners have filed this petition to quash the order dated 05.01.2017 passed by learned ACJM-XI, Gaya in Belaganj P.S. case No. 69 of 2016 whereby and whereunder the learned ACJM found prima facie case under Section 323, 498A, 504/34 of the IPC to proceed against the petitioners and Deepak Kumar and directed to issue summons against the accused persons fixing the case for appearance of the accused on 14.02.2017.

The learned counsel for the petitioners submits that



petitioners are father-in-law, mother-in-law and brother-in-law of the informant/ O. P. No.2. Deepak Kumar, husband of informant, was petitioner No.1 but by order dated 12.10.2018 his name has been deleted. It is submitted that during the course of investigation the I.O did not collect any tangible material but submitted final form finding the case true against the petitioners and the husband of informant under Section 323, 498A, 504/34 of the IPC thereupon the learned ACJM took cognizance. It is submitted that husband of informant filed Cr. Misc. No. 22055 of 2016 for grant of anticipatory bail in which he disputed the factum of his marriage with the informant and on such a coordinate bench of this court vide order dated 28.06.2016 directed the court in seisin of the matter to conduct an enquiry with regard to factum of marriage between Deepak Kumar and opposite party No.2, Sushma Devi. In pursuance of the said order the learned court below held an enquiry and found that relationship of Sushma Devi and her alleged husband, Deepak Kumar, comes under the category of Prohibited Relationship as per Hindu Marriage Act and Deepak Kumar was minor on the date of marriage and doubted the factum of marriage of Sushma Devi with Deepak Kumar. It is submitted that once the court below has found that no marriage was solemnized the



petitioners, who are father-in-law, mother-in-law and brother-in-law of Sushma Devi does not come within the purview of 498A and other Sections of the IPC and order taking cognizance is bad.

On the other hand the learned counsel for the O.P. No.2 submits that the I.O after institution of the case made investigation and collected sufficient materials to show that marriage was solemnized and when the informant went to the house of her in-laws, the husband and other in-laws/ petitioners subjected her to all sorts of physical and mental torture due to non fulfillment of demand of dowry. The informant also begot a child out of the wedlock and, therefore, the order taking cognizance does not suffer from any illegality.

Having considered the submissions of both sides and on perusal of the records, it is crystal clear that Sushma Devi, opposite party No.2 claimed that she was married with Deepak Kumar in the year 2013. She lived happily for two years but thereafter her husband, father-in-law, mother-in-law and brother-in-law started subjecting her to all sorts of torture. She also filed an application before Mahila Helpline but nobody came to her rescue. Her husband, father-in-law, mother-in-law and brother-in-law are living in Gaya town and on account of



such torture she filed the present case. During the course of investigation the witnesses have also supported the facts and consequently the I.O submitted final form finding the case true Section 323, 498A, 504/34 of the IPC against petitioners and Deepak Kumar, husband of the O.P. No.2. It is true that in pursuance of the order dated 28.06.2016 passed in Cr. Misc. No. 22055 of 2016 an enquiry was held but that was held only for confirming the anticipatory bail of the husband of O.P. No.2. Merely because marriage of O.P. No.2 with Deepak Kumar comes under the category of Prohibited Relationship as per Hindu Marriage Act, as the husband of O.P. No.2 was close relative and minor on the date of marriage, the marriage, if so solemnized, cannot be held to be void or non existent ipso facto and on this ground the order taking cognizance, which is otherwise legal, cannot be quashed.

Having considered the facts aforesaid, I find no merit in this petition. Accordingly, the same is dismissed.

(Prabhat Kumar Jha, J)

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