

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.26314 of 2018

Arising Out of PS. Case No.-369 Year-2012 Thana- COMPLAINT CASE District- Supaul

1. Ram Naresh Yadav Son of Shri Bindeshwari Yadav, Resident of Village- Gadhgown, P.S.- Bheja, District- Madhubani, at present under Kharail Parsa Punarwas, Panchayat- Pipra Khur Village- Amtho, Ward No. 8, P.S. + District- Supaul.
2. Punam Devi, Wife of Naresh Kumar Yadav, Resident of Village- Under Nagar Parishad Ward No. 16, Kharail Punarwas, P.S. District- Supaul.

... .. Petitioner/s

Versus

1. State of Bihar
2. Naresh Kumar Yadav, Resident of Village- Under Nagar Parishad, Ward No. 16, Purnarwas, P.S. + District- Supaul.

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr. Udbhav Kumar, Advocate
		Mr. Kuldeep Kumar, Advocate
For the State	:	Mrs. Pronati Singh, APP

CORAM: HONOURABLE MR. JUSTICE SHAILENDRA SINGH
ORAL ORDER

4 02-12-2024 Heard Mr. Udbhav Kumar, learned counsel for the
Petitioners and Mrs. Pronati Singh, learned APP for the State.

2. The instant petition has been filed under Section 482 of the Code of Criminal Procedure (in short 'Cr.P.C.') against the order dated 24.01.2014 passed by learned Judicial Magistrate-cum-Additional Munsif, Supaul in Complaint Case No. 369C/2012 whereby and whereunder the learned trial Court has taken cognizance of the offence punishable under Section 497 of the Indian Penal Code (in short 'IPC') against petitioner no.1 and by the same order the cognizance of the offences



punishable under Sections 323 and 379 of IPC has been taken against both the petitioners.

3. In order to assail the order impugned, Mr. Udbhav Kumar,, learned counsel appearing for the petitioners has mainly taken the grounds that the instant matter is based on a complaint filed by the O.P. no.2 but before filing the said complaint, the petitioner no.2 had lodged a criminal case bearing Supaul P.S. Case No. 116/2010 under Sections 447, 341, 323, 324, 307, 379, 504 and 34 of IPC by filing a written FIR against the O.P. no.2 and others, after that, in retaliation as well as to create pressure upon the petitioners, the complaint case in which the order impugned has been passed, was filed and further, the allegations made in the complaint are completely absurd and unbelievable as the alleged occurrence is said to have taken place inside the house of O.P. no.2 wherein admittedly, the family members of the O.P. no.2 were residing during the relevant time of the commission of the alleged occurrence, so, in presence of the family members it was not possible for the petitioner no.1 to establish a sexual relationship with petitioner no.2 who happens to be wife of O.P. no.2 and further, the petitioner no.1 is a practicing advocate and appeared in S.T. Case No. 337/2010 arising out of Supaul P.S. Case No.



116/2010 lodged by the petitioner no.2 against the O.P. no.2 and others and in this regard, *Annexure-5* is relevant. Learned counsel appearing for the petitioner has also taken the ground that vide impugned order the learned Magistrate has taken the cognizance of the offence under Section 497 of IPC against the petitioner no.1 but the said offence has been declared unconstitutional by the Hon'ble Constitution Bench of the Apex Court and the same was followed by this Court in Cr. Misc. No. 49355 of 2014 of which paragraph no. 4 is relevant and the other offences of which cognizance has been taken, are completely ornamental.

4. This Court finds substance in the aforesaid grounds and it appears that the O.P. No.2 filed the Complaint Case No. 369C/2012 in retaliation as well as to create pressure upon the petitioners on account of Supaul P.S. Case No. 116/2010 registered under Sections 447, 341, 323, 324, 307, 379, 504 and 34 of IPC filed by the petitioner no.2 against the O.P. No.2 and others and the petitioner no.1 who is an advocate appeared in Sessions Trial No. 337/10 relating to the said Supaul P.S. Case 116/2010 on behalf of petitioner no. 2 and in this regard, *Annexure-5* is relevant and further, the allegations made by the O.P. No.2 in his complaint are completely absurd and



unbelievable as the alleged occurrence is said to have taken place at 8 P.M. inside the house of O.P. No.2 where his other relatives were also residing at that time and further, **Hon'ble Constitution Bench of Apex Court** in the case of **Joseph Shine Vs. Union of India** reported in **(2019) 3 SCC 39** held the offence under Section 497 of IPC to be un-constitutional and the same has been followed by this Court in Cr. Misc. No. 49355 of 2014 and the other offences of which cognizance has been taken by the learned trial court by the order impugned appear to be ornamental, so, considering these facts, this Court finds the order impugned passed in Complaint Case No. 369C/2012 to be not proper and the same has been passed in mechanical manner, so, it is set aside and the present petition stands allowed.

(Shailendra Singh, J)

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