

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.14737 of 2017

Arising Out of PS. Case No.-477 Year-2013 Thana- MOTIHARI TOWN District- East
Champaran

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1. Nirmala Devi, Wife of Late Amar Prasad Srivastava
 2. Soni Kumari D/o Late Amar Prasad Srivastava
 3. Pradeep Kumar Son of Amar Prasad Srivastava.
- All are Resident of Mohalla-Dharamsamaj Chowk, P.S.-Chhatauni, District-East Champaran.

... .. Petitioner/s

Versus

1. The State of Bihar.
2. Usha Kumari, Wife of Vishwadeep, D/o Dilip Kumar Srivastava, Resident of Mohalla-Panch Mandir Chowk P.O. and P.S. Motihari town, District-East Champaran.

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr.Pravin Kumar, Advocate

For the Opposite Party/s : Mr. Nawal Kishore Prasad, APP

CORAM: HONOURABLE MR. JUSTICE CHANDRA SHEKHAR JHA
ORAL JUDGMENT

Date : 25-06-2024

1. Heard learned counsel appearing on behalf of the parties.

2. The present application has been filed for quashing the order dated 23.01.2017 in Motihari Town P.S. Case No. 477/13, G. R. Case No.4705/2013, Tr. No. 1798/2016 passed by the learned S.D.J.M., Sadar Motihari, whereby the learned S.D.J.M., has rejected the application under Section 239 of the Cr.P.C. dated 9.5.2016 which was filed by the petitioners for discharge



him from the liability of this case.

3. Prosecution case in brief is that on 17.10.2013 informant lodged a case against her husband and the family members, as to raise a demand of Rs. 1 lakh as dowry. Her marriage was solemnized on 23.6.2006 and on 10th Feb, 2017 she was ousted from her matrimonial house alongwith two minor sons.

4. It is submitted by learned counsel appearing for the petitioners that petitioners are in-laws, where petitioner no. 1 is mother-in-law, petitioner no. 2 is the married sisters-in-law and petitioner no. 3 is brother-in-law, who are living separately having no connection with daily and domestic affairs of opposite party no. 2 and her husband. It is pointed out that the allegations as raised against petitioners are appearing very much general and omnibus in nature *qua* cruelty as alleged and also regarding demand of dowry. It is further submitted that the opposite party no. 2 herself moved before the learned Principal Judge, Family Court, East Champaran



at Motihari for divorce and her prayer of divorce was allowed through Matrimonial (Divorce) Case No. 295 of 2015 dated 12.09.2017. It is submitted that from the perusal of said divorce order, it appears out of deposition of informant/opposite party no. 2 that she is not demanding any permanent alimony from her husband, where she further stated that there is no possibility to live together as husband and wife.

5. In view of aforesaid facts, learned counsel appearing on behalf of the petitioners relied upon the legal report of ***Abhisek Vs. State of Madhya Pradesh***, reported in ***2023 SCC OnLine SC 1083***.

6. Despite of service of notice, opposite party no. 2 failed to join the present proceedings.

7. In view of aforesaid facts and circumstances as petitioners are in-laws, against whom, the allegation for demand of dowry and cruelty is appearing very much general and omnibus, claimed to live separately, where the marriage of opposite party no. 2 dissolved with her



husband by way of divorce by competent family court on her prayer, where it appears that opposite party no. 2 is not even desirous to get permanent alimony, suggesting *prima facie* that disputes between the parties appears resolved and, as such, continuing with present proceeding before the learned trial court would only amount to abuse of process of court of law, accordingly, taking note of aforesaid facts and by taking a guiding notes of ***Abhishek's case (supra)***, the proceeding before the learned trial court *qua* petitioners, impugned order dated 23.01.2017 passed by learned S.D.J.M., Sadar Motihari, is hereby set aside and quashed *qua* petitioners with all its consequential proceedings.

8. Let copy of this order be sent to the trial court, without delay.

(Chandra Shekhar Jha, J)

veena/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	25.06.2024
Transmission Date	25.06.2024

