

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.31339 of 2018**

Arising Out of PS. Case No.-1053 Year-2015 Thana- SAMASTIPUR COMPLAINT CASE
District- Samastipur

Ravi Kumar Bhagat

... .. Petitioner/s

Versus

State Of Bihar and Anr.

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Vinay Kumar Mishra
For the Opposite Party/s : Mr. Jharkhandi Upadhyay

CORAM: HONOURABLE MR. JUSTICE SANDEEP KUMAR
ORAL ORDER

8 07-01-2026 Heard the learned counsel for the petitioner and learned counsel for the State. Service of notice upon the opposite party no. 02 is treated to be valid and she has chosen not to appear.

2. This application has been filed on behalf of the petitioner for quashing the order dated 19.05.2017 passed by the learned Additional Chief Judicial Magistrate, 1st, Rosera, Samastipur in C.R. No. 1053 of 2015 by which the learned Magistrate has taken cognizance under Section 323 and 498(A) of the Indian Penal Code against the petitioner.

3. The learned counsel for the petitioner straight away draws the attention of this Court to page-17 of the quashing application and submits that the petitioner herein had filed Matrimonial Case No. 441 of 2013 in the court of learned



Principal Judge, Family Court, Bhagalpur, in which the OP No. 2 was impleaded as respondent under Section 12(1)(b) of the Hindu Marriage Act, to declare the marriage solemnized between the petitioner and the OP No. 2 as null and void on grounds mentioned in the petition. It is next submitted that notices were issued upon the OP No. 2 by the learned Family Court in Matrimonial Case No. 441 of 2013, but the OP No. 2 did not appear, as such, the case was decided *ex parte* and the marriage was declared null and void by a judgment dated 25-7-2015.

4. The learned counsel next submits that the OP No. 2 was aware of the pendency of the matrimonial case, as such, she instituted the present false complaint case two months prior to the passing of the order in the aforesaid matrimonial case. It is further submitted that to the knowledge of the petitioner till date, the OP No. 2 has not challenged the order passed by the learned Principal Judge, Family Court, Bhagalpur, in Matrimonial Case No. 441 of 2013.

5. From the aforesaid submissions, it appears that the respondent no. 02 is not interested in continuing with the marriage and therefore she has chosen not to appear in the divorce proceeding and therefore ex-parte divorce was granted



to the petitioner. Even in the present case, the opposite party no. 02 has chosen not to appear and the present prosecution has been launched against the petitioner only after the notice in the divorce proceedings was served upon the opposite party no. 02.

6. In view of the above, this application is allowed.

7. Accordingly, the order dated 19.05.2017 passed by the lerned Additional Chief Judicial Magistrate, 1st, Rosera, Samastipur in C.R. No. 1053 of 2015 is hereby quashed.

(Sandeep Kumar, J)

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