

CRIMINAL MISCELLANEOUS No.2113 OF 2003

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In the matter of an application under section 482 of the Code of Criminal Procedure.

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1.DHANANJAY KUMAR TIWARY @ DHANANJAY

TIWARY

2.Sanjay Tiwary, Both sons of Satish Chandra Tiwary 3.Lali Devi wife of Sri Sanjay Tiwary

4.Poonam Kuer wife of late Ajay Tiwary

All residents of Mohalla Dal-Mill Pakaribagh, P.S.-Ara Nawada in the district of Bhojpur . .Petitioners

Versus

1.STATE OF BIHAR

2.Ranju Devi wife of Sri Dhananjay Kumar Tiwary, resident of Bhodwar, P.S.-Chandi in the district of Bhojpur . .Opp.Party -----

For the petitioners: Mr.Akhileshwar Prasad Singh For the State : Mrs. Indu Bala Pandey, A.P.P. -----

PRESENT

THE HON'BLE MR. JUSTICE RAKESH KUMAR

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Rakesh Kumar,J. In compliance of the order dated 6.9.2010 learned counsel for the petitioners files a supplementary affidavit indicating that during the pendency of the present petition, opposite party no.2 has already solemnized second marriage. Keep it on the record.

2. Four petitioners, while invoking inherent jurisdiction of this court under section 482 of the Code of Criminal Procedure, have prayed for quashing of an order dated 5th February, 2002 passed by Sub.Divisional Judicial Magistrate, Ara in Complaint Case No.1361C of 2000/998 of 2002. By the said order, the learned Magistrate on being prima facie satisfied with the offence under sections 498A of the Indian Penal Code and section 4 of the Dowry Prohibition Act directed for issuance of 2

process against the accused persons i.e. the petitioners and two others.

3. Short fact of the case is that opposite party no.2 filed a complaint in the court of Chief Judicial Magistrate, Bhojpur, Ara which was numbered as Complaint Case No.1361C of 2000 against seven accused persons including the petitioners for offences under sections 498A and 406/34 of the Indian Penal Code and 3/4 of the Dowry Prohibition Act. After filing of the complaint petition, the complainant examined some witnesses in support of the complaint and, thereafter, the impugned order was passed by the learned Magistrate.

4. Mr. Akhileshwar Prasad Singh, learned counsel appearing on behalf of the petitioners, while challenging the impugned order has argued that initially the complainant had filed a written report before the police and, thereafter, a first information report vide Ara-Nawada P.S. Case No.211 of 1999 was registered on 3.9.1999 relating to same allegation which has been alleged in the present complaint. After registering the first information report, the police investigated the case. However, during investigation it was found that the allegation was not true and, as such, final report was submitted. Learned counsel for the petitioners while referring to annexure-4 of the petition submitted that on 28.6.2000 the learned Chief Judicial Magistrate, Arrah after filing of the final report, has accepted the same. By referring the said order, it has been further submitted that the learned Chief Judicial Magistrate by order dated 28.6.2000 had also rejected the 3

protest petition which was filed by opposite party no.2. It has further been submitted that even after rejection of the protest petition, the complainant never challenged the order dated 28.6.2000 whereby her protest petition was rejected and final form was accepted. Instead of preferring any petition, the complainant on same and similar allegation filed a second complaint petition which, accordingly to learned counsel for the petitioners, is not permissible. It has been emphasized that keeping in view the attitude of opposite party no.2 and her conduct, it would not be proper to direct the petitioner to participate in the proceeding on the basis of the complaint which has been filed by opposite party no.2. It has further been emphasized that even during the pendency of the present petition as well as during life time of her husband she (opposite party no.2) has solemnized her marriage with one Gorah Nath Choubey, which has been mentioned in the supplementary affidavit filed today. It has been submitted that since opposite party no.2 has already married second time, it appears that she has lost interest in pursuing the present case and, as such, no useful purpose would be served by allowing the prosecution in Complaint Case No.1361C of 2000 to further proceed. On 6.9.2010 also none had appeared on behalf of opposite party no.2, despite the fact that she had entered her appearance through an Advocate. Today again none has appeared on her behalf. A copy of the supplementary affidavit, which has been filed today, was duly served on the learned counsel appearing on behalf of opposite party no.2, even then none has appeared on 4

her behalf at the time of hearing.

5. Mrs. Indu Bala Pandey, learned Addl. Public Prosecutor appearing on behalf of the State has opposed the prayer of the petitioners.

6. Besides hearing learned counsel for the petitioner and the State, I have perused the materials available on the record. Keeping in view the fact that once allegation made by the complainant was thoroughly investigated by the investigating agency and, thereafter, final form was submitted and subsequently a protest petition which was filed by the complainant had also been rejected on 28.6.2000 while accepting the final form, the court feels that allowing the second complaint on the same allegation and that too after solemnization of marriage by opposite party no.2 with another one during life time of petitioner no.1, will amount to allowing abuse of process of court. With a view to prevent abuse of process of court it is necessary to exercise inherent jurisdiction of this court in favour of the petitioners.

7. Accordingly, the order dated 5.2.2002 passed by learned Sub.Divisional Judicial Magistrate, Ara in Complaint Case No.1361C of 2000/998 of 2002 is hereby set aside and the petition stands allowed.

Patna High Court, ( Rakesh Kumar, J.) The 20th September, 2010

Md.S./NAFR.