

CRIMINAL MISCELLANEOUS No.11378 OF 2003 ----

In the matter of an application under Section 482 of the Code of Criminal Procedure,1973. ----

1. SACHIDANAND SINGH, SON OF LATE PARMANAND SINGH
2. AGAM KUMAR SINGH, SON OF LATE PARMANAND SINGH
3. PANKAJ KUMAR, SON OF AGAM KUMAR SINGH
4. MADHUKAR KUMAR, SON OF AGAM KUMAR SINGH
5. SANYUKTA DEVI, WIFE OF AGAM KUMAR SINGH ALL ARE RESIDENT OF VILLAGE KAS
TIKARI, POLICE STATION SULTANGANJ, DISTRICT BHAGALPUR. PETITIONERS.

Versus

1. THE STATE OF BIHAR
2. SHANTI DEVI, DAUGHTER OF LATE AYODHYAY MANDAL, RESIDENT OF VILLAGE
SAJUWA, POST OFFICE HATHIYOK, POLICE STATION ASARGANJ, DISTRICT MUNGER.
OPPOSITE PARTIES. ----

For the Petitioners : M/S Krishna Prasad Singh, Sr. Adv. Mithilesh Kr. Singh, Adv.

For O.P. No.2 : M/S Bholu Prasad, Adv. Swapnil Kumar Singh, Adv.

For the State : Mrs.Indu Bala Pandey, A.P.P. ----

P R E S E N T

THE HON'BLE MR. JUSTICE RAKESH KUMAR ----

Rakesh Kumar,J. Five 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 17.4.2003 passed in Complaint Case No.1113 of 1999 by learned Chief Judicial Magistrate, Bhagalpur. By the said order, the learned Magistrate has taken cognizance of offence under Sections 498A, 323 and 341 of the Indian Penal code. 2

2. Short fact of the case is that opposite party no.2 filed a complaint, which was numbered as Complaint Case No.1113 of 1999 in the court of Chief Judicial Magistrate, Bhagalpur, alleging therein against all the petitioners for commission of offences under Sections 307, 376, 125, 147, 148, 325, 509, 498A, 323, 334, 352, 355, 358 and 34 of the Indian Penal Code. In the complaint petition, it was alleged that while the opposite party no.2 was returning from court after doing pairvi in her case and she arrived at a lonely place, all the aforesaid accused persons intercepted the complainant and forcibly took her to the house of accused persons where it was alleged that her husband petitioner Sachidanand Singh forcibly kept the complainant in a room and on force, she committed rape. It was alleged that accused persons were demanding huge amount as dowry from the complainant and she was pressurized to withdraw the case, which was instituted by her against the accused persons. On the aforesaid allegation, complaint petition was filed and after conducting enquiry, the learned Magistrate came to the conclusion 3

that since the petitioner no.1 was husband of complainant offence under Section 376 of the Indian Penal Code was not made out. However, the learned Magistrate took cognizance of offence under Sections 498A, 323 and

341 of the Indian Penal code and directed for summoning the petitioners.

3. Aggrieved with the order of cognizance, all the petitioners approached this Court by filing the present petition, which was admitted on 20.10.2005. While admitting, it was directed that during the pendency of this application, interim order passed on 27.9.2004 shall remain operative. The order of stay is still continuing.

4. Shri Krishna Prasad Singh, learned Senior Counsel appearing on behalf of the petitioners, while challenging the order of cognizance, submits that the present complaint petition was filed maliciously as well as by way of suppression of material fact. Learned Senior Counsel has referred to Annexure-2 to the petition, which is decree prepared in Marriage Case No.4 of 1993. It was submitted that on contest, marriage of petitioner no.1 with opposite party no.2 was 4

finally dissolved by the judgment and decree dated 4.5.1998. It was submitted that order was passed in presence of learned counsel for both the parties. It was submitted that since the marriage had already been dissolved, on contest, the opposite party no.2, by way of suppression of fact, filed the present complaint petition i.e. Complaint Case No.1113 of 1999 on 9.12.1999. It was submitted that in the complaint petition, the complainant had not even whispered that her marriage with petitioner no.1 was already dissolved by the court of competent jurisdiction and due to that reason, the learned Magistrate, while taking cognizance, had refused to take cognizance under Section 376 of the Indian Penal code. In some and substance, it was submitted that the prosecution in the present case was initiated maliciously and by way of suppression of fact and on those grounds, the entire prosecution as well as order of cognizance is liable to be set aside.

5. Shri Swapnil Kumar Singh, learned advocate appearing on behalf of opposite party no.2 has vehemently opposed the prayer 5

of the petitioners. It was argued by him that complaint petition itself constitutes commission of offences committed by all the accused persons and the learned Magistrate had conducted thorough enquiry and thereafter, he had passed the order of cognizance. According to learned counsel appearing on behalf of opposite party no.2, there is no defect in the impugned order of cognizance and as such, according to him, the petition is liable to be rejected.

6. Smt. Indu Bala Pandey, learned Additional Public Prosecutor appearing on behalf of the State has supported the stand taken by Shri Swapnil Kumar Singh, learned counsel appearing on behalf of opposite party no.2.

7. Besides hearing learned counsel for both the parties, I have also perused the materials available on record. On going through the allegation made in the complaint petition itself, this Court is satisfied that the allegation appears to be doubtful. Moreover, in view of annexure-2 i.e. judgment and decree of divorce passed by the competent court in Marriage Case No.4 of 1993, it is 6

evident that marriage of complainant with petitioner no.1 has come to an end on 4.5.1998. After the divorce decree, filing of the present complaint by the complainant makes it clear that the complaint was not filed fairly and honestly, rather it was filed with some oblique motive and maliciously. On the ground of malicious prosecution as well as suppression of fact, the court is satisfied that the order of cognizance is not tenable in the eye of law and it amounts to abuse of the process of the court.

8. Accordingly, the order of cognizance dated 17.4.2003 passed in Complaint Case No.1113 of 1999 by the Sub Divisional Judicial Magistrate, Bhagalpur is hereby set aside and petition stands allowed. (Rakesh Kumar,J.)

PATNA HIGH COURT

Dated 13.9.2010

N.A.F.R./N.H.