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Court : Patna

Decided On : May-19-2006

Judge : Ghanshyam Prasad, J.

Appellant : Santosh Prasad @ Santosh Kumar and ors.

Respondent : The State of Bihar and anr.

Disposition : Appeal allowed

Prior history : Ghanshyam Prasad, J. 1. This application under Section 482 Cr.P.C. has been filed to quash the entire criminal proceeding pending in the court of S.D.J.M., Gaya as well as order of cognizance dated 20.4.2001 passed in Complaint Case No. 56 of 2001, Trial No. 541 of 2002. 2. Heard. 3. The opposite party No. 2 Rinko Devi was the legally married wife of petitioner Santosh Prasad. The marriage was solemnised on 30.6.1996 and thereafter. The opposite party No. 2 came to the house of petitioner No.

Judgement :

Ghanshyam Prasad, J.

1. This application under Section 482 Cr.P.C. has been filed to quash the entire criminal proceeding pending in the court of S.D.J.M., Gaya as well as order of cognizance dated 20.4.2001 passed in Complaint Case No. 56 of 2001, Trial No. 541 of 2002.

2. Heard.

3. The opposite party No. 2 Rinko Devi was the legally married wife of petitioner Santosh Prasad. The marriage was solemnised on 30.6.1996 and thereafter. The opposite party No. 2 came to the house of petitioner No. 1. Even before mehdi faded its colour the differences began to surface and ultimately after eight days of stay the opposite party No. 2 returned to her Naihar. After few months she again came to her Sasural and a child was born out of the wedlock. However, the, differences continued to persist.

4. It appears that later on both the parties entered into series of litigation including the present one, which is under challenge.

5. The learned Counsel for the petitioners submitted that the criminal proceeding is an abuse of process of the court. After filing of divorce suit in retaliation, this complaint case in question was filed implicating all the family members with false and baseless allegations. It is further submitted that the marriage of opposite party No. 2 and petitioner No. 1 has already been dissolved by a decree of divorce. The order of divorce was passed after refusal by the opposite party No. 2 to live with her husband. Annexure-6 is the photo copy of the judgment dated 17.4.2004 passed by Additional Judge, Chatra in Matrimonial Suit No. 86 of Annexure-5 would go to show that first of all in the year 2000 the petitioner No. 1 filed a suit of restitution of conjugal life under Section 9 of the Hindu Marriage Act, 1959. Later on, it was converted into divorce suit. It was filed on the ground of desertion. The opposite party No. 2 also appeared in the suit but did not file the detail written statement. On the other hand, she filed the petition expressing her unwillingness to return to her conjugal life. Accordingly, degree of divorce was passed.

6. Present criminal case was filed after filing of the suit for restitution by petitioner No. 1. Thereafter the enquiry under Section 202 Cr.P.C. was conducted and cognizance has been taken vide impugned order. Several allegations have been made in the complaint petition but vague and after filing of the suit by petitioner No. 1.

7. However, as it may, now position has completely changed, marriage has already been dissolved on the basis of mutual consent. Parties are living separately. Now continuous of criminal proceeding amount to abuse of process of the court.

8. Thus, in view of the peculiar facts and circumstances, it would proper to quash the entire criminal proceeding as well as impugned order. According, this application is allowed and the entire criminal proceedings including impugned order is hereby quashed.

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