

Brahmdeo Pathak and ors Vs. the State of Bihar and anr

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Court : Patna

Decided On : May-13-2012

Appellant : Brahmdeo Pathak and ors

Respondent : The State of Bihar and anr

Judgement :

IN THE HIGH COURT OF JUDICATURE AT PATNA Criminal Miscellaneous
No.513 o

1. Brahmdeo Pathak S/O Late Ramrup Pathak Resident Of Village- Imamganj, P.O. And P.S.- Imamganj, District- Gaya.
2. Basanti Devi W/O Sri Brahamdeo Pathak Resident Of Village- Imamganj, P.O. And P.S.- Imamganj, District- Gaya.
3. Rajeev Kumar Pathak S/O Sri Brahamdeo Pathak Resident Of Village- Imamganj, P.O. And P.S.- Imamganj, District- Gaya.
4. Sudhanshu Kumar Pathak S/O Sri Brahamdeo Pathak Resident Of Village- Imamganj, P.O. And P.S.- Imamganj, District- Gaya.
5. Kumar Vivekanand S/O Sri Brahamdeo Pathak Resident Of Village- Imamganj, P.O. And P.S.- Imamganj, District- Gaya. Versus 1. The State Of Bihar 2. Pratima Kumari D/O Sri Shamanand Mishra Resident Of Village- Gareria, Post- Raniganj, P.S.- Imamganj, District- Gaya. ----- 02. 13.01.2012 Heard Mr. Manoj Kumar, learned counsel appearing on behalf of the petitioners and

learned counsel appearing on behalf of the State. The petitioners are aggrieved by the order dated 19.02.2011 passed by the learned Sub-Divisional Judicial Magistrate, Sherghati, District-Gaya in Complaint Case No. 278 of 2010, Tr. No. 2583 of 2011, whereby the learned Magistrate has been pleased to take cognizance of the offence punishable under Section 498A of the Indian Penal Code against the petitioner who are the husband and the other members of the family. Learned counsel for the petitioners, with reference to an application filed on 6.5.2008 under Section 9 of the Hindu Marriage Act, submits that initially an attempt was made by the petitioner for restoration of matrimonial harmony by filing the aforesaid application but the complainant-opposite party no. 2 did not respond to the same and thus the petitioner no. 3 having no other option filed an appropriate application before the Principal Judge, Family Court, Gaya, giving rise to Matrimonial Title Suit No. 99 of 2010 under Section 13 of the Hindu Marriage Act, 1955 seeking divorce from the complainant-opposite party no.

2. He submits that the aforesaid application having been filed on 1.5.2010 i.e. two years after filing of the petition under Section 9 of the Hindu Marriage Act, the present complaint has been filed by the complainant-opposite party no. 2 one month thereafter on 1.6.2010. He further submits that the allegation set out in the complaint petition are omnibus and general in nature and is a manifestation of the divorce case filed on behalf of the petitioner no.

3. Issue notice to the opposite party no. 2 for which requisites under ordinary process as well as registered cover be filed within one week, failing which this application shall stand dismissed without further reference to the Bench. Put up after service of notice. In the meantime, further proceedings in Complaint Case No. 278 of 2010, Tr. No. 2583 of 2011 pending in the court of Sub-Divisional Judicial Magistrate, Sherghati, District-Gaya shall remain stayed. (Jyoti Saran, J.) S.Sb/-