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**(2016) 04 PAT CK 0110**

**In the Patna High Court**

**Case No :** Criminal Miscellaneous No. 27155 of 2015; (Arising Out of PS.Case No. 724 of 2013 Thana - Madhepura District - Madhepura)

Pradeep Sah

APPELLANT

Vs

State of Bihar

RESPONDENT

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**Date of Decision :** 19-04-2016

**Acts Referred:**

Criminal Procedure Code, 1973 (CrPC) — Section 482  
Penal Code, 1860 (IPC) — Section 363, 366, 497

**Citation :** (2016) 3 ECrc 95 : (2016) 4 PLJR 124

**Hon'ble Judges :** Mr. Ashwani Kumar Singh, J.

**Bench :** Single Bench

**Advocate :** Mr. Vikram Dev Singh and Md. Harun Quareshi, Advocates, for the Appellant; Mr. Ram Bachan Singh, APP, for the Respondent

**Final Decision :** Allowed

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## **Judgement**

Mr. Ashwani Kumar Singh, J. (Oral) - The present application under Section 482 of the Code of Criminal Procedure (For short "CrPC") has been filed for quashing the order dated 21.04.2015 passed by the learned Sessions Judge, Madhepura in Criminal Revision No. 30 of 2015 whereby the revision application filed by the petitioner against the order dated 06.01.2015 passed by the learned Chief Judicial Magistrate, Madhepura in Madhepura (Ghailarh) P.S. Case No. 724 of 2013.

2. The aforesaid Madhepura (Ghailarh) P.S. Case No. 724 of 2013 was registered on the basis of a written report submitted by one Anil Sah to the Officer-in-charge, Madhepura (Ghailarh) Police Station on 08.12.2013.

3. It has been stated in the aforesaid written report by Anil Sah that on 25.11.2013 in the morning when he woke up, he did not find his wife Binita Devi inside the house. He made a search for her but she could not be traced. He inquired about her whereabouts from her relatives and friends, but failed to locate her. He suspected that his wife might have eloped with the petitioner as

she was having extramarital affair with the petitioner and he had found them in compromising position on different occasions for which panchayati had also taken place. A suspicion has also been raised that the petitioner might have abducted his wife for the purpose of marriage.

4. On the basis of the aforesaid allegations, Madhepura (Ghailarh) P.S. Case No. 724 of 2013 was registered under Sections 363 and 366 of the IPC against the petitioner and investigation was taken up.

5. During investigation of the case wife of the informant namely, Binita Devi was produced by the police for recording her statement under Section 164 of the CrPC before a Magistrate on 19.12.2013. In her statement, she had categorically stated that no one had kidnapped her and she had left her matrimonial home out of her own will because she was being subjected to cruelty in various ways by her husband and his relatives.

6. It has been contended by the learned counsel for the petitioner that on completion of investigation the police submitted report under Section 173(2) of the CrPC vide charge-sheet No.3 of 2014 dated 26.01.2014. The investigating officer did not find the allegations to be true under Sections 363 and 366 of the IPC. However, the case was found to be true under Section 497 of the IPC against the petitioner and the informant's wife Binita Devi. On perusal of the police report submitted under Section 173(2) of the CrPC, vide order dated 06.01.2015, the learned Chief Judicial Magistrate, Madhepura took cognizance under Section 497 of the IPC against the petitioner and the informant's wife Binita Devi.

7. It is further contended that the learned Chief Judicial Magistrate has acted mechanically in the present matter and has not applied his judicial mind while passing the order dated 06.01.2015 whereby cognizance has been taken under Section 497 of the IPC against the petitioner and the wife of the informant. He has contended that save and except wild suspicion and hypothetical presumption of the informant of the case, there was no other material before the learned Chief Judicial Magistrate on the basis of which he could have taken cognizance of the offence punishable under Section 497 of the IPC. He has further contended that the revisional court has also not applied its judicial mind while passing the impugned order dated 21.04.2015. The revisional court has rejected the application simply on the ground that the court below had passed the impugned order after perusing the materials available on record without discussing anything about the merits of the case.

8. On the other hand, learned counsel for the State has contended that the orders passed by the learned Chief Judicial Magistrate and the learned Sessions Judge, Madhepura do not suffer from any illegality. There is specific allegation in the FIR that the petitioner was living in adultery with the wife of the informant and, thus, the ingredients of the offence punishable under Section 497 of the IPC are clearly attracted in the present case.

9. I have heard respective counsel for the parties and perused the record.

10. The word "Adultery" is defined under Section 497 of the IPC as under:-

"497. Adultery. - Whoever has sexual intercourse with a person who is and whom he knows or has reason to believe to be the wife of another man, without the consent or connivance of that man, such sexual intercourse not amounting to the offence of rape, is guilty of the offence of adultery, and shall be punishable with imprisonment of either description for a term which may extend to five years, or with fine, or with both. In such case the wife shall not be punishable as an abettor."

(underlining mine)

11. The provision prescribed under Section 497 of the IPC makes the man who commits adultery with another's wife punishable but the wife cannot be prosecuted even as an abettor.

12. Thus, it would be evident that though section 497 IPC confers upon the husband a right to prosecute the adulterer, but it does not confer a right to the husband to prosecute his wife. Apparently, in the present case, ignoring the statutory provision the investigating officer of the case has submitted charge-sheet under Section 497 of the IPC against the wife of the informant also. The learned Chief Judicial Magistrate also failed to notice this vital aspect of the matter while taking cognizance of the offence under Section 497 IPC. Apparently, the order was passed without judicial application of mind. The revisional court has also mechanically rejected the revision application against the order of the Chief Judicial Magistrate.

13. In that view of the matter, the order impugned cannot be sustained. Accordingly, the order dated 21.04.2015 passed by the learned Sessions Judge, Madhepura in Criminal Revision No.30 of 2015 as also the order dated 06.01.2015 passed by the learned Chief Judicial Magistrate, Madhepura in Madhepura (Ghailarh) P.S. Case No. 724 of 2013 are set aside.

14. The matter is remanded back before the jurisdictional Magistrate for passing appropriate order in accordance with law after taking into consideration the materials available on record.

15. With the aforesaid observations and directions, the application stands allowed.