NON-REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 1955 OF 2009

Nayan Prasad & Ors. ... Appellant(s)

Versus

State of Bihar & Anr. ... Respondent(s)

J U D G M E N T

Abhay Manohar Sapre, J.

1. This appeal is filed by the appellants(accused) against the final judgment and order dated 23.11.2006 passed by the High Court of Judicature at Patna in Criminal Misc. No. 39874 of 2004 whereby the High Court dismissed the application filed by the appellants herein under Section 482 of the Code of Criminal Procedure, 1973 (hereinafter referred to as "the Code") for quashing the order

dated 07.12.2004 passed by the Judicial Magistrate, 1st Class, Motihari in Complaint Case No.1864(C) of 2001 corresponding to Trial No.987 of 2004 whereby he refused to discharge the appellants and posted the case for framing of charge.

2. It may not be necessary to set out the facts in detail except to the extent necessary for the disposal of the appeal.

3. Respondent No. 2-wife of one Rameshwar Prasad (since dead) filed a criminal complaint (Annexure-P-1) in the Court of Chief Judicial Magistrate, Motihari (Bihar) against the appellants herein for commission of offences punishable under Sections 498A, 323, 406, 379 and 504 of the Indian Penal Code, 1860 (hereinafter referred to as "the IPC"). It was then transferred to the Judicial Magistrate, First Class Motihari, who took cognizance of the offences and issued summons to

the appellants herein, who are in-laws of respondent No. 2(Complainant).

4. The appellants, on being served, filed a petition under Section 245 of the Code and prayed for their discharge. This petition was rejected by the Magistrate by order dated 07.12.2004. The appellants felt aggrieved and filed an application under Section 482 of the Code before the High Court at Patna and sought quashing of the main complaint itself on several grounds including the ground that the Court concerned has no territorial jurisdiction to entertain the complaint and the appropriate Court to decide the complaint is the Court at Gopalganj District.

5. By impugned order, the High Court dismissed the application filed by the appellants herein, which has given rise to file this appeal by way of special leave before this Court.

6. Having heard the learned counsel for the parties and on perusal of the record of the case, we find no merit in the appeal.

7. In our opinion, both the Courts below were justified in dismissing the appellants' petition filed under Section 245 of the Code and the application filed under Section 482 of the Code. We also do not find any good ground to interfere in the impugned order. It is really unfortunate that the complaint filed in the year 2001 by respondent No. 2 (wife) is not yet decided on merits and has remained pending for such a long time on a technical plea.

8. The remedy of the appellants is to contest the complaint filed by respondent No. 2 on merits. It is then for the Magistrate to decide the complaint on merits after recording the evidence of the parties in accordance with law.

9. We, however, refrain from making any observation on merits because we have directed the Magistrate to decide the complaint on merits.

10. In view of the foregoing discussion, the appeal fails and is accordingly dismissed.

11. Let the complaint be decided by the concerned Magistrate within six months from the date of this order.

12. A copy of the order be sent forthwith to the concerned Magistrate by the Registry for compliance.

.....J.
(ABHAY MANOHAR SAPRE)

.....J
(S. ABDUL NAZEER)

New Delhi,
July 20, 2018