

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.10105 of 2013

Arising Out of PS.Case No. -519 Year- 2008 Thana -PHULWARI District- -

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Md. Salahuddin Ahmad & Ors.

.... Petitioner/s

Versus

The State of Bihar

.... Opposite Party/s

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with

Criminal Miscellaneous No.4518 of 2013

Arising Out of PS.Case No. -519 Year- 2008 Thana -PHULWARI District- PATNA

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Wasim Akhtar

.... Petitioner/s

Versus

The State of Bihar

.... Opposite Party/s

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Appearance :

(In Cr.Misc. No.10105 of 2013)

For the Petitioner/s : Mr.

For the Opposite Party/s : Mr. Manoj Kumar 1(App)

(In Cr.Misc. No.4518 of 2013)

For the Petitioner/s : Mr. Sanjay Sinha

For the Opposite Party/s : Mr. Dr.Indiwar Kumari (App)

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CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR
SAHOO

ORAL ORDER

- 8 16-07-2015 1. Heard the learned counsel, Mr. Shabir Alam, for the petitioners in both the Cr. Misc. applications and learned A.P.P. for the State in both the Cr. Misc. applications.
2. In spite of notice on opposite party No.2, she has not appeared.
3. The petitioners in both the Cr. Misc. applications have prayed for quashing the order dated 07.11.2012 passed in Cr. Revision No.221 of 2011 whereby the revision application was

dismissed by District & Sessions Judge, Patna and also for quashing the order dated 22.02.2011 passed in Phulwarisharif P.S. Case No.519 of 2008 rejecting the petition filed by the petitioner for discharge in the above case which give rise to G.R. No.6229 of 2008.

4. The learned counsel for the petitioner submitted that there is omnibus allegation against the husband, father-in-law, mother-in-law and brother-in-law of the complainant. In fact the petitioners tried their best to keep the complainant with them but in vain. She is not residing with the petitioner intentionally and has filed this false case with a view to harass the petitioner. According to the learned counsel, in the F.I.R. itself, the allegation is mainly against the husband, i.e., assault was made by the husband whereas the other incidence described in the F.I.R. even if taken to be correct then also it do not constitute offence under Section 498A I.P.C. The learned counsel further submitted that after investigation, the police did not find the case to be true but on the direction of the higher officials, chargesheet has been submitted.

5. On the other hand, the learned A.P.P. objected the prayer and submitted that in the complaint case, there is direct allegation for demand of dowry, subjecting the complainant to cruelty in connection with demand of dowry and allegation have been made against all the accused persons. Chargesheet has been submitted and

on the basis of the chargesheet, the Court has taken cognizance. Therefore, the order taking cognizance cannot be quashed under Section 482 Cr.P.C.

6. Perused the F.I.R. From perusal of the F.I.R., it appears that there is direct allegation of demand of dowry. Further the allegation of subjecting the complainant to cruelty is also there. Admittedly, still today, the complainant is not residing with the petitioners.

7. The Hon'ble Supreme Court in the case of *Central Bureau of Investigation Vs. K.M. Saran 2008 (4) SCC 471* has held that **'the High Court in its jurisdiction under Section 482 Cr.P.C. is not called upon to embark upon an enquiry whether the allegation in the FIR and the chargesheet were reliable or not and thereupon to render definite finding about truthfulness or veracity of the allegation. These are the matters which can be examined only by the Court concerned after the entire material is produced before it on a through investigation and evidence is led. The High Court is only to examine whether the allegation made in the F.I.R. and the chargesheet taken on their face value and accepted in their entirety prima facie constitute an offence for making out a case against the respondents.'**

8. In the present case in view of the above facts, the

cognizance was taken. Thereafter, the petitioners filed criminal Misc. application for quashing the order whereby the cognizance were taken. Before the High Court, they withdrew the criminal Misc. application which they filed for quashing the order taking cognizance. On the same fact, the petitioners thereafter filed application for discharge before the trial Court. No further material are there on record. On rejection of the same, they filed criminal revision application before the District & Sessions Judge. The revisional Court after considering the grounds has rejected the prayer. Now, therefore, this is a second round approach to the Court on the same set of fact.

9. In view of the above facts and circumstances of the case and in view of the fact that this Court at this stage cannot examine the truthfulness or otherwise of the allegation made in the F.I.R. and the evidences collected by the I.O. under Section 161 Cr.P.C. Those matters are to be considered only at the time of final hearing of the case. I, therefore, do not find any merit in this application, as such both these Cr. Misc. applications are hereby dismissed.

Sanjeev/-

(Mungeshwar Sahoo, J)

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