

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.50645 of 2012

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1. Binny Kumari D/O Sri Parashnath Singh R/O Village- Rewa Basatpur
(Southern), P.S- Saraiya, District- Muzaffarpur.

.... Petitioner/s

Versus

1. The State Of Bihar
2. Saroj Devi W/O Krishna Kumar And D/O Sri Lalan At Present Resident
Of Village- Kaithwalia, P.O- Darmaha, P.S- Kalyanpur, District- East
Champaran.

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Sanjay Kumar @ S.K., Advocate

For the Opposite Party/s : Mr. Dhananjay Kumar No.2 A.P.P.

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**CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR
SINGH**
ORAL ORDER

6 13-05-2015

Heard learned counsel for the petitioner, learned
counsel for the State and O.P. no.2.

2. The present application under section 482 of
the Code of Criminal Procedure has been filed for quashing the
order dated 11.09.2012 passed in Trial No. 3649 of 2012 arising
out of Complaint Case No. C-1561 of 2011 by which finding a
prima facie case to be made out for the offences punishable under
sections 498A and 379 of the Indian Penal Code, the petitioner
and three others have been summoned to face trial.

3. The prosecution story, as described in the
complaint petition, in short, is that the complainant Saroj Devi was
married to Shri Krishna Kumar Singh on 06.06.2010. In the



traditional wedding ceremony attendant festivities and formalities substantial amount was spent by the father of the complainant. About one month after the marriage, the accused persons started demanding Rs. 100000/-in cash and a motorcycle. They subjected her to cruelty in various ways so that she may compel her father to fulfill their illegal demand. It has further been stated that the husband of the complainant is employed in the Indian Army and while he was going to join at the place of his posting, he instigated the other family members to behave in a manner so that the complainant may be left with no option but to fulfill the illegal demand. Thereafter the accused persons subjected her cruelty in various ways. She was abused and assaulted by the accused persons in her matrimonial home. On 05.10.2010, while she was pregnant, she was taken on a jeep by the petitioner and her father and was dropped at her parent's house. They forbade her to come back to her matrimonial home. They kept all her belongings and ornaments with themselves. It has been stated that on 13.03.2011 the complainant gave birth to a baby at a Private Nursing Hospital at Muzaffarpur. All the accused persons had knowledge about the same but they failed to take any care of the complainant or the newly born baby.

4. In support of the allegations made in the



complaint she was examined on oath and apart from the complainant four other witnesses were also examined in course of enquiry conducted under section 202 of the Code of Criminal Procedure. After examining the complainant and four enquiry witnesses the learned S.D.J.M, Motiharti passed the impugned order dated 11.09.2012 whereby the husband of the complainant, the petitioner (sister of the complainant's husband) and their parents have been summoned.

5. It has been contended that it is a case of matrimonial dispute between the complainant and her husband in which the other family members have unnecessarily been dragged. It has further been contended that there is no truth behind the allegation of subjecting the complainant to any sort of cruelty for non-fulfillment of demand of dowry. It is submitted that at the relevant time the petitioner was not even married. She had no say in the day-to-day matrimonial life of the complainant and her husband. There is no specific allegation against her in the complaint petition. There is only a passing reference of her name and a general and omnibus allegation against her that she also participated in subjecting the complainant to cruelty along with the other accused persons. It is submitted that in the statement on oath, in reply to the court question, the complainant has stated that she

does not want to go to her matrimonial home. She has not uttered a word against the petitioner in her deposition. The two other inquiry witnesses, namely, Lalan Kunwar, father of the complainant and Baban Kunwar, uncle of the complainant have also not made any specific allegation against the petitioner. The remaining two witnesses namely, Jitendra Singh and Birejdra Kumar Singh are co-villagers and even in their deposition also no specific allegation has been made against the petitioner.

6. On the basis of the aforesaid submission,, learned counsel for the petitioner has submitted that the learned S.D.J.M, has erroneously summoned the petitioner in a mechanical manner without appreciating the evidence collected in course of enquiry.

7. On the other hand learned counsel for the O.P. no.2 has submitted that though there is no specific allegation against the petitioner in the statement of the complainant or in the statement of witnesses recorded in course of enquiry but in the complaint petition it has categorically been stated that on 05.10.2010 the complainant was taken on a jeep by the petitioner and her father and they dropped her at her matrimonial home. They had also threatened the complainant not to come back to her matrimonial home. Hence, he has submitted that there is

evidence on the basis of which ingredients of the offences are attracted. He has also submitted that there is omnibus allegation against the petitioner also along with others to have subjected the complainant to cruelty for non-fulfillment of demand of dowry.

8. Learned counsel for the State has also adopted the submission made by the learned counsel for the O.P. no.2.

9. I have heard respective counsel for the parties and with their assistance perused the record. Though the contents of the complaint made out a prima facie case against the husband of the complainant and some other family member, but if evidence collected in course of enquiry is appreciated and scrutinized in its entirety, it would appear that there is no specific allegation against the petitioner, who is unmarried sister of the husband of the complainant except casual reference of her name at some places. In any view, in a matrimonial dispute, without allegation of any active involvement in the matter, it would not be proper to put the petitioner on trial. In course of argument, it has been submitted by the learned counsel for the petitioner that presently the petitioner is married and is residing at her matrimonial home. In my view, allowing the prosecution to continue against her, would be counterproductive and it may even ruin her matrimonial life.

10. Recognizing the rising trend of matrimonial dispute, the Apex Court in *G.B. Rao Vs. L.H.V Prasad* reported in (2000)3 SCC 693 observed in Para 12 as under:

“12. There has been an outburst of matrimonial disputes in recent times. Marriage is a sacred ceremony, the main purpose of which is to enable the young couple to settle down in life and live peacefully. But little matrimonial skirmishes suddenly erupt which often assume serious proportions resulting in commission of heinous crimes in which elders of the family are also involved with the result that those who could have counselled and brought about rapprochement are rendered helpless on their being arrayed as accused in the criminal case. There are many other reasons which need not be mentioned here for not encouraging matrimonial litigation so that the parties may ponder over their defaults and terminate their disputes amicably by mutual agreement instead of fighting it out in a court of law where it takes years and years to conclude and in that process the parties lose their “young” days in chasing their “cases” in different courts.”

11. The view taken by the Apex Court in that matter was that the court would not encourage such dispute. At this stage, I am tempted to take note of the fact of yet another case before the Apex Court (*Geeta Mehrotra V. State of U.P.* reported in 2012(10) SCC 741). In that case there was matrimonial dispute between wife and husband. The wife lodged an F.I.R against her



husband and family members including the accused Geeta Marhotra, the unmarried sister. She filed an application for quashing of the cognizance on several grounds before the High Court. One of the grounds was that a prima facie case was not attracted against her in absence of specific allegation. The High Court declined to interfere in the matter. The order of the High Court was challenged before the Apex Court in appeal. After hearing the parties, in paragraph 27, the Apex Court held as under:

“27. The High Court in our considered opinion appears to have missed that assuming the trial court had territorial jurisdiction, it was still left to be decided whether it was a fit case to send the appellants for trial when the FIR failed to make out a prima facie case against them regarding the allegation of inflicting physical and mental torture to the complainant demanding dowry from the complainant. Since the High Court has failed to consider all these aspects, this Court as already stated hereinbefore, could have remitted the matter to the High Court to consider whether a case was made out against the appellants to proceed against them. But as the contents of the FIR do not disclose specific allegation against the brother and sister of the complainant's husband except casual reference of their names, it would not be just to direct them to go through protracted procedure by remanding for consideration of the matter all over again by the High Court and make the unmarried sister of the main accused and his elder brother to suffer the ordeal of a criminal case pending against them specially when the FIR does not disclose ingredients of offence under Sections

498-A/323/504/506 IPC and Sections 3/4 of the Dowry Prohibition Act.”

12. Misuse of section 498A of I.P.C. in may cases has been judicially noticed by the Apex Court as well as various High Courts. It has been highlighted in those judgments that keeping in view the social objective behind the section, it is the duty of the courts to ensure that the complaints filed with false or exaggerated allegations out of ulterior motives or in a fit of emotion should be curbed .

13. Recently, the Apex Court equated misuse of the section to “legal terrorism” and said it was being treated as a “weapon rather than a shield by disgruntled wives.”

14. The Apex Court in Preeti Gupta & another v. State of Jharkhand reported in (2010)7 SCC 667 even reminded the learned members of the Bar that as they owe enormous social responsibility and obligation for ensuring social fiber of family life, they ought not to advice presentation of exaggerated version of small incidents so that ever grooming tendency of one complaint giving rise to multiple cases should be curbed. Treating every complaint under 498 A as basic human problem the Apex Court observed that the advocates must make serious endeavor to help the parties in arriving at an amicable solution.

15. In Preeti Gupta & another (Supra) in paras 30, 32,

33 and 34 the Apex Court went on to hold:

“30. It is a matter of common knowledge that unfortunately matrimonial litigation is rapidly increasing in our country. All the courts in our country including this Court are flooded with matrimonial cases. This clearly demonstrates discontent and unrest in the family life of a large number of people of the society.

31. x x x x x x x x x

32. It is a matter of common experience that most of these complaints under Section 498-A IPC are filed in the heat of the moment over trivial issues without proper deliberations. We come across a large number of such complaints which are not even bona fide and are filed with oblique motive. At the same time, rapid increase in the number of genuine cases of dowry harassment is also a matter of serious concern.

33. The learned members of the Bar have enormous social responsibility and obligation to ensure that the social fibre of family life is not ruined or demolished. They must ensure that exaggerated versions of small incidents should not be reflected in the criminal complaints. Majority of the complaints are filed either on their advice or with their concurrence. The learned members of the Bar who belong to a noble profession must maintain its noble traditions and should treat every complaint under Section 498-A as a basic human problem and must make serious endeavour to help the parties in arriving at an amicable resolution of that human problem. They must discharge their duties to the best of their abilities to ensure that social fibre, peace and tranquillity of the society remains intact. The members of the Bar should also ensure that one complaint should not lead to multiple cases.

34. Unfortunately, at the time of filing of the complaint the implications and consequences are not properly visualised by the complainant that such complaint can lead to insurmountable harassment, agony and pain to the complainant, accused and his close relations.”

16. When I look to the facts and circumstances of the present case, in the background of legal principles set out by the Apex Court, I deem it appropriate to quash the complaint against the petitioner in the interest of justice.

17 Accordingly, the order dated 11.09.2012 passed in Trial No. 3649 of 2012 arising out of Complaint Case No. C-1561 of 2011 by the learned Sub-divisional Judicial Magistrate, so far as it relates to the petitioner, is quashed.

18. Consequently, the application stands allowed to the extent indicated hereinabove.

(Ashwani Kumar Singh, J)

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