

**IN THE HIGH COURT OF JUDICATURE AT PATNA**

**Criminal Miscellaneous No.40391 of 2012**

Arising Out of PS.Case No. -240 Year- 2007 Thana -Muffasil District- SIWAN

Sanjay Kumar Srivastava, son of Yogendra Prasad Srivastava

2. Yogendra Prasad Shrivastava, son of Late Bachcha Lal

3. Veena Devi wife of Yogendra Prasad Srivastava

All are resident of village Dhanauti Math, P.S. Siwan(M), District- Siwan.

.... .... Petitioner/s

Versus

1. The State of Bihar

2. Mala Devi D/O Amarnath Shrivastava wife of Sanjay Kumar Srivastava, present residing in village Jalalpur, P.S. Daraudha, District- Siwan.

.... .... Opposite Party/s

**Appearance :**

For the Petitioner/s : Mr. A.K.Shrivastava, Adv.

For the State : Ms S. Begum, APP

For Opposite Party No.2: Mr. Akhileshwar Kumar, Adv.  
Mr. S.K.Jha, Adv.

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

**ORAL JUDGMENT**

**Date: 16-04-2015**

The instant application has been filed for quashing the order dated 22<sup>nd</sup> September, 2012 passed by the learned Sessions Judge, Siwan in Sessions Trial No.19 of 2012 arising out of Muffasil P.S.Case No. 240 of 2007, whereby and whereunder the court below has rejected the prayer of the petitioners under section 227 of the Code of Criminal Procedure (hereinafter referred to as 'the Code').

Initially, a complaint was filed before the learned Chief Judicial Magistrate, Siwan, which was referred to the police under section 156(3) of the Code, pursuant to which Muffasil P.S.Case No.240 of 2007 was registered on 5.10.2007 for the offences punishable under sections 406, 420, 498-A, 307 and 506 read with 34



of the Indian Penal Code as well as 3 and 4 of the Dowry Prohibition Act. On conclusion of investigation, the police submitted charge sheet against the petitioners. Accordingly, the learned Magistrate took cognizance of the offence and held that since the offence punishable under section 307 of the Indian Penal Code is exclusively triable by the court of Sessions, the case is committed to the court of Sessions.

The petitioners filed an application for discharge before the learned Sessions Judge, Siwan on 21.05.2012 stating therein that no case under section 307 of the Indian Penal Code is made out from the materials available in the case diary and since other sections under which charge sheet was submitted are triable by the Magistrate, the case ought to be remitted back to the court of the learned Chief Judicial Magistrate for trial in accordance with law. The parties were heard over the application filed on behalf of the petitioners and by a reasoned order dated 28.05.2012 the learned Sessions Judge, Siwan dismissed the application filed on behalf of the petitioners. Learned Sessions Judge observed in the order that apart from other sections under which cognizance has been taken, there are sufficient material to frame charge under section 307 of the Indian Penal Code also and accordingly the petitioners were directed to remain present in the court for answering the charges. However, the petitioners filed another application on 12<sup>th</sup> September, 2012 under section 227 of the

Code and took a plea that in spite of rejection of their earlier application, they have still a right to be heard under section 227 of the Code for their discharge from the case.

Learned Sessions Judge, Siwan has considered the material available in the case diary and came to the conclusion that the ingredients of the offence punishable under section 307 of the Indian Penal Code are attracted in the present case. Accordingly, the learned Sessions Judge has dismissed the application filed on behalf of the petitioners vide order dated 22.09.2012. The aforesaid order dated 22.09.2012 is under challenge before this Court in the present application.

I have heard learned counsel for the petitioners and learned counsel for the State.

Learned counsel for the petitioners has submitted that the petitioners have falsely been implicated in this case due to matrimonial dispute. He has submitted that most of the witnesses, who have supported the allegation of the prosecution in course of investigation, are hearsay witnesses and no reliance can be placed upon their evidence for prosecuting the petitioners in the present case. The other contention is that even on admitted facts of the case there was no demand of any dowry either from the complainant or from her parents and hence the ingredients of the offence punishable under

section 498-A of the Indian Penal Code would not be attracted.

In my view, the submission is misconceived. To constitute an offence under section 498-A of the Indian Penal Code, demand of dowry is not an essential ingredient. As a matter of fact, under section 498-A of the Indian Penal Code, cruelty towards a married lady is punishable.

So far as the contention of the petitioner regarding evidentiary value of the statement of the witnesses recorded under section 161 of the Code is concerned, in my considered opinion, the test of proof required in course of trial is different from the test of proof which are to be seen at the stage of framing of charge. At this stage, even a strong suspicion would be sufficient for framing of charge. It is well settled that at this stage, a mini-trial of the case is not to be held. Even a roving enquiry into the facts stated before the police is not permissible at this stage.

For the reasons recorded herein above, I find no error in the order passed by the learned Sessions Judge, Siwan. Accordingly, the application is dismissed.

**(Ashwani Kumar Singh, J)**

Pradeep/-

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