

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.4372 of 2016

Arising Out of PS.Case No. -114 Year- 2013 Thana -BRAHMPUR District- BUXAR

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1. Heera Dubey Son of Suresh Dubey
 2. Bidayati Devi @ Bidayati, W/o Heera Dubey
 3. Akhilesh Dubey Son of Heera Dubey
 4. Preetam Devi @ Preetam Wife of Akhilesh Dubey
- All are resident of village - Barka Dhakaich, P.S. Krishna Braham
Brahampur, District - Buxar

.... Petitioner/s

Versus

1. The State of Bihar
2. Sunita Devi Wife of Arvind Dubey, daughter of Rajendra Tiwari
resident of village - Diyaman, P.S. Krishna Braham Brahampur, District -
Buxar

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Dr. Kamal Deo Sharma, Advocate
For the Opposite Party/s : Mr. Pranav Kumar (App)

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

2 15-07-2016 The present application has been filed for quashing

the order dated 18.12.2015, passed by learned Additional District
& Sessions Judge-VI, Buxar in Criminal Revision No. 77 of 2015,
upholding the order dated 15.04.2015, passed by the learned Sub-
Divisional Judicial Magistrate, Buxar in Brahampur P.S. Case No.
114 of 2013 registered under Sections 341, 323 and 498A IPC and
3/4 of the Dowry Prohibition Act whereby the discharge
application of the petitioners under Section 239 Cr.P.C. has been
rejected.

The prosecution case as per the written report



submitted by Sunita Devi is to the effect that the informant got married with Arbind Dubey on 28.04.2007 when the petitioners being the parents, brother and brother's wife of the husband of the informant tortured the informant in league with her husband for non-fulfillment of the dowry demand and the husband of the informant threatened to perform second marriage. It is also alleged that when the father, brother and other family members of the informant came to the matrimonial house and enquired about torture then they were also being assaulted and threatened that unless Rs. 1,00,000/- are not paid and two kathas of land are not purchased the informant will not be allowed to reside in the matrimonial house. With the aforesaid accusation Brahmpur P.S. case no. 114 of 2013 was registered under Sections 341, 323 and 498A of the IPC and 3/4 of the Dowry Prohibition Act. On conclusion of the investigation, final report (Chargesheet) was submitted under Sections 341, 323, 406 and 498A/34 of the IPC and 3/4 of the Dowry Prohibition Act and consequently cognizance was taken.

The petitioner filed an application for discharge under Section 239 Cr. P.C. on 08.04.2015. The learned SDJM, Buxar after perusing the materials available on record including the report under Section 173(2) Cr. P.C. and hearing the counsel



for the parties rejected the discharge application finding since the charges are not groundless. The petitioners preferred Cr. Rev. No. 77 of 2015 against the order of learned SDJM dated 15.04.2015 and learned Addl. District and Sessions Judge-VI, Buxar dismissed the revision application holding that there is no infirmity in the order of learned SDJM, hence the present quashing application.

Learned counsel for the petitioners submits that the accusations are omnibus and general and there is nothing specific against the petitioners. Moreover, the petitioners are still ready to resolve the issue, though, statement to that effect has not been made in the petition.

In view of this Court, the accused can be discharged under Section 239 of the Cr. P.C. when upon considering the police report and the documents sent with it under section 173, making such examination, if any, of the accused as the Magistrate thinks necessary and after giving the prosecution and the accused an opportunity of being heard, the Magistrate considers the charges against the accused to be groundless.

The learned S.D.J.M. has not found the charges groundless. Moreover, the order of learned S.D.J.M. has been upheld by learned Additional Sessions Judge in exercise of

revisional jurisdiction.

However, Apex Court in the case of K. Srinivas Rao Vs. D.A. Deepa reported in (2013)5 SCC 226 held that the criminal courts dealing with the complaint under Section 498A of the Indian Penal Code should, at any stage and particularly, before they take up the complaint for hearing, refer the parties to mediation centre if they feel that there exist elements of settlement. Paragraph no. 46.2 of the judgment reads as follows:-

"The criminal courts dealing with the complaint under Section 498A IPC should, at any stage and particularly, before they take up the complaint for hearing, refer the parties to mediation centre if they feel that there exist elements of settlement and both the parties are willing. However, they should take care to see that in this exercise, rigour, purport and efficacy of Section 498A IPC is not diluted. Needless to say that the discretion to grant or not to grant bail is not in any way curtailed by this direction. It will be for the court concerned to work out the modalities taking into consideration the facts of each case."

Though this Court is not inclined to interfere with the impugned order. However, learned court below is not precluded to make effort to get the issue reconciled by referring the matter to the mediation center even at this stage of proceeding.

Accordingly the application is disposed of.

(Dinesh Kumar Singh, J)

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