

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.5528 of 2014

Arising Out of Case No. -480 Year- 2007 Thana -SAHARSA COMPLAINT CASE District-
SAHARSA

- =====
1. Md. Arshad, Son of Md. Moiuddin
 2. Md. Moiuddin, Son of Late Md. Mohiuddin
 3. Noor Saba, Wife of Md. Moiuddin
 4. Md. Rasid, Son of Md. Moiuddin

All are resident of Village-Ghordhaur, P.S.-Banma Itahari, District-Saharsa

.... Petitioners

Versus

1. The State of Bihar
2. Rafat Praveen D/o Md. Samauddin Resident of Village-Paharpur, P.S.-
Bakhtiarpur, District-Saharsa

.... Opposite Parties

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Appearance :

For the Petitioner/s : Mr. Pramod Mishra, Advocate

Ms. Rashmi Jha, Advocate

For the Opposite Party no.2 :Mr. Kumar Rajeev, Advocate

For the State : Mr. Jharkhandi Upadhyay, APP

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 15-11-2016

This application is for quashing of the order dated
04.05.2009 passed by the learned Sub Divisional Judicial
Magistrate, Saharsa whereby the petitioners have been summoned
to face trial in connection with Complaint Case No.480C of 2007

for the offence punishable under Section 498-A of the Indian Penal Code.

2. In the complaint, the complainant Rafat Praveen has stated that she was married to Md. Arshad (petitioner no.1) in the year 2003. For about one and a half years, she was kept well in her matrimonial home and out of the wedlock, two daughters were born. However, subsequently, the accused persons started demanding Rs.1 lakh from her and on non-fulfilment of the same, she was being subjected to cruelty in various ways. She was compelled to file a case against the petitioners under Section 498-A/34 of the Indian Penal Code and section 3 & 4 of the Dowry Prohibition Act vide Salakhua P.S. Case No. 70 of 2005. The said case ended into compromise as the accused persons accepted their guilt and promised to keep her with dignity and honour in matrimonial home in future. On the basis of compromise, the complainant went to her matrimonial home on 1st December, 2006 and started living there. The learned Judicial Magistrate acquitted the accused persons vide order dated 23rd December, 2006 and immediately thereafter on 24th December, 2006, while the complainant was cooking food, she was dragged to the courtyard and the accused persons attempted to kill her by sprinkling k. oil on her person. On hue and cry made by her, several persons of the

locality came to her rescue. Thereafter, the accused persons driven her out of the matrimonial home along with her two minor daughters.

3. The complainant and two other witnesses whose statements were recorded under Section 202 of the Code of Criminal Procedure, namely, Upendra Bhagat and Md. Samauddin have also supported the allegations made in the complaint.

4. Taking into consideration the aforesaid facts, the learned Magistrate finding a prima facie case to be made out under Section 498-A of the Indian Penal Code summoned the petitioners to face trial vide order dated 04.05.2009. The said order is under challenge before this Court.

5. It has been submitted by the learned counsel for the petitioners that the allegations made in the complaint are totally false. They are also general and omnibus in nature. As a matter of fact, the petitioners had executed a sale deed in respect of 5 katha land in favour of the complainant and, thereafter, a compromise was arrived at between the parties in the police case instituted earlier by the complainant. It is also submitted that the complainant comes from a different background and despite best efforts made by petitioner no.1 Md. Arshad to keep her with dignity and honour in her matrimonial home, she is not willing to live along with the

petitioners.

6. On the other hand, learned counsel for the State has submitted that the defence of the petitioner can be examined only at the stage of trial. He has contended that no document has been annexed in support of the fact that any land was ever transferred in favour of the complainant by the petitioners. He has further contended that even if some land has been transferred in her favour, the same would not absolve the petitioners from the liability of keeping the complainant in her matrimonial home with dignity and honour.

7. I have heard learned counsel for the parties and perused the record.

8. Admittedly, there are serious allegations made in the complaint against the petitioners. The veracity of such allegations cannot be taken into consideration at this stage for the purpose of quashing the order summoning the petitioners. The defence, if any, is to be considered by the court either at the stage of framing of charge or at the stage of trial.

9. In that view of the matter, I find no illegality in the impugned order passed by the court below.

10. Accordingly, the application is dismissed.

11. However, the petitioners would be at liberty to

raise all the points available to them at the stage of framing of charge.

Sanjeet/-

(Ashwani Kumar Singh, J.)

AFR/NAFR	NAFR
CAV DATE	----
Uploading Date	17.11.2016
Transmission Date	17.11.2016