

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.16632 of 2012

Arising Out of PS.Case No. -214 Year- 2011 Thana - Laheria Sarai District- DARBHANGA

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1. Jagdish Mahto S/O Late Bisho Mahto
 2. Rajeshwari Devi W/O Sri Jagdish Mahto
 3. Anil Kumar Mahto @ Dular S/O Sri Jagdish Mahto
- All residents of village- Chhatwan, P.O. Chhatwan, P.S. Keoti, District - Darbhanga
4. Ram Narayan Purvey S/O Late Akshaya Lal Purvey
 5. Anjani Devi W/O Shri Ram Narayan Purvey
 6. Rajiv Kumar Purvey S/O Sri Ram Narayan Purvey
- All resident of Mohalla - Kadirabad, P.O. Lalbag, P.S. L.N.M.U., District - Darbhanga

.... Petitioners

Versus

1. The State of Bihar
2. Radha Mahto W/O Shri Akhilesh Kumar @ Murari R/O Village - Chhatwan, P.O. Chhatwan, P.S. Keoti, District - Darbhanga

.... Opposite Parties.

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Appearance :

For the Petitioner/s : Mr. P. Singh, Advocate
For the Opposite Party/s : Mr. N. K. Prasad, APP

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 26-09-2016

By way of the present application preferred under
Section 482 of the Code of Criminal Procedure, 1973, the
petitioners have sought for quashing of the order dated 17th March,

2012 passed by the learned Chief Judicial Magistrate, Darbhanga, whereby cognizance of the offences under Section 498-A of the Indian Penal Code (for short 'IPC') and Sections 3 and 4 of the Dowry Prohibition Act, 1961 has been taken against the petitioners in connection with Laheria Sarai P. S. Case No. 214 of 2011.

2. It is alleged in the FIR that informant was married to one Akhilesh Kumar @ Murari on 28.01.2008 as per Hindu rites and customs and had gone to her matrimonial house. After nine days she came back to her *Naihar* with her husband and after staying there for five days, her husband started demanding a sum of Rs.1,00,000/- as dowry. The parents of the informant expressed their inability to fulfill the demand which caused annoyance to her husband. It is further alleged that as the demand of dowry was not fulfilled, her husband went to his home and was not coming for her *Bidai*. Subsequently, at the intervention of well-wishers her husband took her to matrimonial home. It has been alleged that all the accused persons thereafter started torturing her physically and mentally for non-fulfilment of the alleged demand. In the meantime, she conceived and gave birth to a female child on 20.12.2008. It is further alleged that after birth of the female child the accused persons started further harassing her and when it became unbearable, she came back to her *Naihar*, where she stayed for four months. She again went to her *Sasural*, but the behaviour



of the accused persons did not change and they remained adamant on their demand. She has further alleged that her Bhai-sur (elder brother of the husband) Anil Mahto assaulted her with hammer on her leg causing fracture injury. Thereafter, she came to her *Naihar* and got herself treated. On 02.04.2011, the husband of the informant came to her parental house and assured that after forgetting the past they would lead a peaceful life in future. He also assured that he would keep and maintain her with honour and dignity. He shared bed with the complainant in the night, but in the morning of 03.04.2011, the husband of the informant put a rope around her neck and tried to kill her by tightening it. On *hulla*, the husband fled away. It is also alleged that common friends and well-wishers had arranged for a *panchaiti* on 12.04.2011, but her husband and father-in-law did not turn up.

3. On the basis of the above written report of the informant, Laheria Sarai P. S. Case No. 214 of 2011 dated 13.04.2011 was registered against the petitioners under Section 498-A of the IPC and Sections 3 and 4 of the Dowry Prohibition Act. The police investigated the case and submitted charge-sheet against the accused persons. On perusal of the police report, the learned Chief Judicial Magistrate took cognizance of the offences and summoned the petitioners to face trial.

4. It is contended that petitioner no. 1 is father-in-law,



petitioner no. 2 is mother-in-law, petitioner no. 3 is *Bhaisur* (brother-in-law), petitioner no. 4 is *Nandoi* (brother-in-law), petitioner no. 5 is married *Nanad* and petitioner no. 6 is the son of petitioners no. 4 and 5. The petitioners no. 4 and 5 were married about 35 years ago and are aged about 63 years and 57 years respectively. Both are living at their village and have no connection with the alleged offence. The allegations made against them are nothing but an abuse of Section 498-A of the IPC. It is further contended that the petitioners no. 1 and 2, being in-laws are living separately from the informant and her husband since long. The family properties were divided in the year 2008 itself by mutual consent of the parties and since then they are living separately without interfering into the matter of one another. The husband of the informant had filed Matrimonial Case No. 25 of 2011 in the court of Principal Judge, Family Court, Darbhanga in which both husband and wife had appeared for reconciliation proceeding on 27.08.2011 and after reconciliation both husband and wife had agreed to lead their conjugal life peacefully and had gone together from the court. Referring to the order dated 27.08.2011 it has been submitted that the learned learned Principal Judge, Family Court had observed in his order that on persuasion of the court both became ready to join each other and both stated that now they have solved their dispute and they do not want to further come to the

court. In view of the understanding between the parties, the matter was disposed of at the stage of reconciliation itself. It is contended that in view of the aforesaid facts the continuation of the case as against the petitioners would be nothing but an abuse of the process of the court.

5. *Per contra*, it is contended by the learned counsel for the State that allegations made in the FIR are quite serious. The informant has categorically stated that she was abused and assaulted in her matrimonial home by the accused persons for non-fulfilment of demand of dowry. It is further contended that in view of the submissions made by the learned counsel for the petitioners, the matter was also sent back to the Patna High Court Mediation Centre for settlement of dispute. However, learned Mediator has reported to the Court that in spite of sincere efforts being taken by him, the dispute between the parties could not be resolved through the process of mediation and, thus, the mediation has failed. It is also contended that the petitioners have also not mentioned about the date of filing of matrimonial case before the court of Principal Judge, Family Court, Darbhanga and in absence thereof it cannot be said that the application was filed by the husband of the informant prior to the institution of the present FIR.

6. I have heard the parties and perused the record.

7. It is true that general and omnibus allegations have



been made against all the accused persons to have abused and assaulted the informant of the case on different occasions. However, from the tenor of the FIR itself it would appear that there was an effort on the part of the husband to have some sort of settlement of dispute with his wife. The immediate reason for lodging the FIR was also the fact that the husband had come to his *Sasural* and after persuading the informant that he will keep her well in future and shared bed with her in the night but in the morning he tried to kill her by tightening a rope around her neck. It would also appear from the voter identity-cards issued by the Election Commission of India that petitioners no. 4 and 5 were aged about 61 years and 56 years respectively and their son Rajeev Kumar Purvey (petitioner no. 6) was aged about 33 years in the year 2011 when the FIR was instituted. Thus, I find substance in the submission of the learned counsel for the petitioners that the marriage of petitioners no. 4 and 5 had taken place almost 35 years prior to the institution of the FIR.

8. Section 498-A of the IPC was introduced in the year 1983 to protect married women from being subjected to cruelty by the husband or his relatives. The offence under Section 498-A of the IPC is cognizable, non-compoundable and non-bailable. It penalizes offensive conduct of the husband and his relatives towards the married women. In course of time, misuse of Section



498-A of the IPC by means of forged/exaggerated allegations and implication of several relatives of the husband in many cases has been noticed by the Apex Court and various High Courts. It has been highlighted in those cases that keeping in view the social objective behind this Section, it is the duty of the Courts to ensure that the complaints/FIRs filed with forged/exaggerated allegations out of ulterior motives or fit of emotions should be curbed.

9. In **Preeti Gupta and Anr. vs. State of Jharkhand and Anr.**, reported in (2010) 7 SCC 667, the Apex Court equated misuse of the Section to “legal terrorism” and said it was being treated as “weapons rather than a shield by disgruntled wives”. In **Preeti Gupta** (supra) the Apex Court observed that it is a matter of common experience that most of these complaints under Section 498-A of the IPC are filed in the heat of moment over trivial issues without proper deliberations. It went on to hold that it has come across a large number of such complaints which are not even *bona fide* and are filed with oblique motive. However, expressing concern over cases of dowry harassment, it also reminded that at the same time, rapid increase in the number of genuine cases of dowry harassment is also a matter of serious concern.

10. Recently, in **Arnesh Kumar vs. State of Bihar and Anr.**, reported in (2014) 8 SCC 273, the Supreme Court has observed as under :

“4. There is a phenomenal increase in matrimonial disputes in recent years. The institution of marriage is greatly revered in this country. [Section 498-A IPC](#) was introduced with avowed object to combat the menace of harassment to a woman at the hands of her husband and his relatives. The fact that [Section 498-A IPC](#) is a cognizable and non-bailable offence has lent it a dubious place of pride amongst the provisions that are used as weapons rather than shield by disgruntled wives. The simplest way to harass is to get the husband and his relatives arrested under this provision. In a quite number of cases, bed-ridden grand-fathers and grand-mothers of the husbands, their sisters living abroad for decades are arrested. “Crime in India 2012 Statistics” published by the National Crime Records Bureau, Ministry of Home Affairs shows arrest of 1,97,762 persons all over India during the year 2012 for the offence under [Section 498-A IPC](#), 9.4% more than the year 2011. Nearly a quarter of those arrested under this provision in 2012 were women i.e. 47,951 which depicts that mothers and sisters of the husbands were liberally included in their arrest net. Its share is 6% out of the total persons arrested under the crimes committed under [Penal Code](#). It accounts for 4.5% of total crimes committed under different sections of the penal code, more than any other crimes excepting theft and hurt. The rate of charge-sheeting in cases under [Section 498-A IPC](#) is as high as 93.6%, while the conviction rate is only

15%, which is lowest across all heads. As many as 3,72,706 cases are pending trial of which on current estimate, nearly 3,17,000 are likely to result in acquittal.”

11. This Court also feels that misuse arising from exaggerated versions and over implication would be counter-productive in order to achieve the purpose for which 498-A of the IPC was introduced by the legislature.

12. Coming back to the facts of the present case it would be evident that petitioners no. 1 and 2 being father and mother respectively of the husband of the informant and the petitioner no. 3 being brother of the husband of the informant are alleged to be living together in the matrimonial home of the informant along with her. Their defence that there is partition and they are living separately from the informant and her husband has to be established during trial by adducing evidence. At this stage, it would not be proper for this Court to enter into such defence in order to exonerate them from facing trial. Hence, in their case the inherent power of this Court under Section 482 of the Cr.P.C. cannot be used to stifle the prosecution.

13. However, the remaining petitioners, i.e., petitioners no. 4 to 6, admittedly, do not live together with the husband and other accused persons in the matrimonial house of the informant.

There is a general and omnibus allegation against them. In the opinion of this Court, allowing the trial to proceed against the aforesaid petitioners would be a gross abuse of the process of the court as petitioner no. 5 Anjani Devi, sister of the husband of the informant was married to petitioner no. 4 Ram Narayan Purvey more than three decades back, which fact finds support from the age of the petitioner no. 6 Rajiv Kumar Purvey who is their son and was aged about 32 years at the time of institution of the FIR. All are residents of a different village and their implication in the present case seems to be actuated with malice.

14. Accordingly, impugned order dated 17th March, 2012 passed by the learned Chief Judicial Magistrate, Darbhanga in Laheria Sarai P. S. Case No. 214 of 2011 so far as petitioners no. 4 to 6, namely, Ram Narayan Purvey, Anjani Devi and Rajiv Kumar Purvey are concerned, is quashed.

15. Thus, the application is allowed in part. So far as petitioners no. 1 to 3 are concerned, the court below shall proceed against them in accordance with law.

(Ashwani Kumar Singh, J.)

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CAV DATE	
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