

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.19380 of 2013

Arising Out of PS.Case No. -133 Year- 2012 Thana -ROSEIRA District- SAMASTIPUR

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1. Neeraj Kumar Singh
2. Pankaj Kumar Singh
3. Dhiraj Kumar Singh
4. Mrinal Kumar Singh
All above four are sons of Sri Maheshwar Prasad Singh
5. Jai Kumari Devi @ Bachchi W/o Sri Maheshwar Prasad Singh
6. Maheshwar Prasad Singh S/o Late Ram Pratap Singh
All are resident of Village- Gadhapura, P.S.- Gadhapura, District- Begusarai
.... Petitioners

Versus

1. The State of Bihar
2. Nitu Devi W/o Nalin Singh @ Bablu Resident of Village-Gadhapura, P.S.-
Gadhapura, District- Begusarai
.... Opposite Parties

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Appearance :

For the Petitioner/s : Mr. Ajay Thakur, Advocate
For the State : Mr. Satyendra Naryan Singh, APP
For the Opposite Party No.2 : Mr. Sadanand Ray, Advocate

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 19-10-2016

Heard Mr. Ajay Thakur, learned Advocate appearing on behalf of the petitioners, Mr. Satyendra Narayan Singh, learned Additional Public Prosecutor for the State and Mr. Sadanand Ray, learned Advocate appearing on behalf of the opposite party No. 2.

2. This application under Section 482 of the Code of Criminal Procedure (for short 'CrPC') has been filed for quashing



the impugned order dated 16th March, 2013 passed by the learned Sub Divisional Judicial Magistrate, Rosera, in Trial No. 2518 of 2013, arising out of Rosera P.S. Case No. 133 of 2012 by which differing with the police report, cognizance has been taken of the offences punishable under Sections 498-A, 323, 379 and 504 of the Indian Penal Code (for short 'IPC') and Section 3 & 4 of the Dowry Prohibition Act (for short 'DP Act') against the petitioners and they have been summoned to face trial.

3. Initially, a complaint, vide Complaint Case No. 374 of 2012, was filed by the complainant Nitu Devi, which was referred to the police under Section 156(3) of the CrPC for investigation, pursuant to which Rosera P.S. Case No. 133 of 2012 was registered against the petitioners and one Nalin Singh @ Babloo. According to the informant Nitu Devi, she was married to Nalin Singh @ Babloo on 6th July, 2008 and, after marriage, she went to her matrimonial home along with her husband where she was kept well for some time. Thereafter, the accused persons started demanding Rs.2,00,000/- and a Hero Honda motorcycle from her. When she stated that her father is a poor man and is not in a position to arrange such a huge amount, the accused persons abused and assaulted her. When she informed her father about the alleged demand, he came to her matrimonial home and tried to persuade the



accused persons not to humiliate and harass her, the accused persons became more aggressive and said that until the demand is fulfilled, she would be dealt with in the same manner. It is further alleged in the FIR that when she used to go to her parents' home, her husband Nalin Singh @ Babloo used to come there also and coerce her in various ways. On 8th April, 2011, when her father along with the witnesses came to her matrimonial home and raised his grievance, the accused persons assaulted her in their presence and thrown her out of her matrimonial home after retaining her *stridhan* worth Rs. 70,000/- and since then she has been forced to live at her parents' home. Lastly, it is alleged that on 24th April, 2012, her father came to know that Nalin Singh @ Babloo has married another girl, namely, Deepa Kumari.

4. On completion of investigation, the police submitted charge-sheet No. 211 of 2012 dated 31.08.2012 against the informant's husband Nalin Singh @ Babloo. But, in the police report, the accusation as against the petitioners was found to be false and they were not sent up for trial.

5. On perusal of the FIR, the materials collected during investigation and the police report submitted under Section 173 of the CrPC, the learned Sub Divisional Judicial Magistrate, Rosera, vide impugned order dated 16th March, 2013 took

cognizance of the offences under Sections 498-A 323, 379 and 504 of the IPC and Section 3 and 4 of the DP Act and summoned the petitioners also along with the charge-sheeted accused Nalin Singh @ Babloo.

6. It has been contended by Mr. Ajay Thakur, learned Advocate appearing for the petitioners that the petitioners Maheshwar Prasad Singh and Jai Kumari Devi @ Bachchi are father-in-law and mother-in-law of the informant respectively. The other four petitioners, namely, Neeraj Kumar Singh, Pankaj Kumar Singh, Dhiraj Kumar Singh and Mrinal Kumar Singh are brothers of the husband of the informant. He has submitted that there is no specific allegation against them in the FIR and during investigation also witnesses have categorically stated before police that Nalin Singh @ Babloo had married the informant Nitu Devi even without informing his family members. It is further contended that the Superintendent of Police had supervised the case and had also recorded statements of several witnesses including the father of the informant and had opined that informant's marriage was not an arranged one and she had never ever visited her matrimonial home.

7. Mr. Thakur has contended that the learned Magistrate has completely overlooked the statement of the father of the informant as recorded in para 72 of the case diary, wherein he has



categorically stated that Nalin Singh @ Babloo used to come to his village along with one of his relatives Ranjan Singh @ Girish and, at his instance, he had married his daughter out of his own sweet will. He has also stated that neither any invitation card of the marriage ceremony was printed nor any other family member of Nalin Singh had attended the marriage. He has contended that independent witnesses Jogi Paswan and Suresh Paswan, whose statements have been recorded in paragraphs no. 73 and 74 of the case diary, have also stated that Nalin Singh @ Babloo had married the informant out of his own sweet will, whereas one Sukhram Yadav, whose statement is recorded in paragraph no. 39 of the case diary had stated that it was a case of love marriage and the family members of Nalin Singh had not participated in the marriage.

8. On the other hand, learned counsel for the State has submitted that several witnesses examined during investigation including the informant of the case have supported the allegations made in the FIR, wherein the informant has alleged that she was subjected to cruelty by her husband and his family members for non-fulfilment of demand of a motorcycle and Rs.2,00,000/- in cash.

9. Learned counsel for the opposite party no. 2 has also supported the contention advanced on behalf of the learned counsel for the State. He has submitted that the Magistrate is not

bound by the opinion of the police and there is no illegality in the impugned order, whereby the learned Magistrate has summoned the petitioners differing with the police report. He has also submitted that there are sufficient materials in the case diary to summon the accused persons.

10. I have heard respective counsel for the parties and perused the materials available on record including the case diary summoned by the Court.

11. I find substance in the argument advanced by the learned counsel for the petitioners. It is true that there is omnibus and general allegation of subjecting the informant to cruelty for non-fulfilment of dowry in statement of the informant and some other witnesses examined during investigation. However, no specific role has been ascribed to any of them nor any date or time of assault has been given in their statements.

12. It would be evident from perusal of the case diary that several witnesses examined during investigation have stated that the informant and Nalin Singh @ Babloo had married, as they had developed liking for each other. The other family members had neither participated in the marriage nor they had any knowledge of the said marriage. The Superintendent of Police, who had personally supervised the case and has opined that Nalin Singh @ Babloo had



concealed the factum of marriage from his parents and other family members. He has also opined on the basis of statement of the father of the informant that the informant had never ever gone to her matrimonial home. In that view of the matter, the Superintendent of Police had found lack of evidence against the petitioners of the case and, accordingly, the investigating officer also while submitting charge-sheet against the accused Nalin Singh @ Babloo had found accusation against the petitioners of the present case to be false and had not sent them up for trial.

13. It would be evident from the materials collected during investigation that there are no specific and credible allegations against the relatives of the husband with necessary particulars and, hence, it would not be proper in the interest of justice to allow them to face the rigmarole of trial.

14. In **Kans Raj vs. State of Punjab [AIR 2000 SC 2324]**, a three-Judge Bench of the Supreme Court has taken note of false implication of in-laws' or the other relations of the husband by mere conjectures in dowry related cases. The Court observed:

“For the fault of the husband, the in-laws or the other relations cannot, in all cases, be held to be involved in demand of dowry.”

15. In **Sushil Kumar Sharma vs. Union of India and others [(2005) 6 SCC 281]**, the Supreme Court observed:-



“19. The object of the provision is prevention of the dowry menace. But as has been rightly contended by the petitioner many instances have come to light where the complaints are not bona fide and have been filed with oblique motive. In such cases acquittal of the accused does not in all cases wipe out the ignominy suffered during and prior to trial. Sometimes adverse media coverage adds to the misery. The question, therefore, is what remedial measures can be taken to prevent abuse of the well-intentioned provision. Merely because the provision is constitutional and intra vires, does not give a licence to unscrupulous persons to wreak personal vendetta or unleash harassment. It may, therefore, become necessary for the legislature to find out ways how the makers of frivolous complaints or allegations can be appropriately dealt with. Till then the courts have to take care of the situation within the existing framework. As noted above the object is to strike at the roots of dowry menace. But by misuse of the provision a new legal terrorism can be unleashed. The provision is intended to be used as a shield and not as an assassin’s weapon. If the cry of “wolf” is made too often as a prank, assistance and protection may not be available when the actual “wolf” appears. There is no question of the investigating agency and courts casually dealing with the allegations. They cannot follow any straitjacket formula in the matters relating to dowry



tortures, deaths and cruelty. It cannot be lost sight of that the ultimate objective of every legal system is to arrive at the truth, punish the guilty and protect the innocent. There is no scope for any preconceived notion or view. It is strenuously argued by the petitioner that the investigating agencies and the courts start with the presumptions that the accused persons are guilty and that the complainant is speaking the truth. This is too wide and generalized a statement. Certain statutory presumptions are drawn which again are rebuttable. It is to be noted that the role of the investigating agencies and the courts is that of a watchdog and not of a bloodhound. It should be their effort to see that an innocent person is not made to suffer on account of unfounded, baseless and malicious allegations. It is equally undisputable that in many cases no direct evidence is available and the courts have to act on circumstantial evidence. While dealing with such cases, the law laid down relating to circumstantial evidence has to be kept in view.

16. In **G.V. Rao v. L.H.V. Prasad & Ors. [(2000) 3**

SCC 633], the Supreme Court observed:-

“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.”

17. In Preeti Gupta and Anr. v. State of Jharkhand and Anr. [(2010) 7 SCC 667], the Supreme Court observed:-

“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 fiber 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 fiber, peace and tranquility 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 visualized by the complainant that such complaint can lead to insurmountable harassment, agony and pain to the complainant, accused and his close relations.

35. The ultimate object of justice is to find out the truth and punish the guilty and protect the innocent. To find out the truth is a Herculean task in majority of these complaints. The tendency of implicating husband and all his immediate relations is also not uncommon. At times, even after the conclusion of criminal trial, it is difficult to ascertain the real



truth. The courts have to be extremely careful and cautious in dealing with these complaints and must take pragmatic realities into consideration while dealing with matrimonial cases. The allegations of harassment of husband's close relations who had been living in different cities and never visited or rarely visited the place where the complainant resided would have an entirely different complexion. The allegations of the complainant are required to be scrutinized with great care and circumspection.

36. Experience reveals that long and protracted criminal trials lead to rancour, acrimony and bitterness in the relationship amongst the parties. It is also a matter of common knowledge that in cases filed by the complainant if the husband or the husband's relations had to remain in jail even for a few days, it would ruin the chances of amicable settlement altogether. The process of suffering is extremely long and painful.

37. Before parting with this case, we would like to observe that a serious relook of the entire provision is warranted by the legislation. It is also a matter of common knowledge that exaggerated versions of the incident are reflected in a large number of complaints. The tendency of over implication is also reflected in a very large number of cases. The criminal trials lead to immense sufferings for all concerned. Even ultimate acquittal in the trial may also not be able to wipe out the deep scars of



suffering of ignominy. Unfortunately a large number of these complaints have not only flooded the courts but also have led to enormous social unrest affecting peace, harmony and happiness of the society. It is high time that the legislature must take into consideration the pragmatic realities and make suitable changes in the existing law. It is imperative for the legislature to take into consideration the informed public opinion and the pragmatic realities in consideration and make necessary changes in the relevant provisions of law.

38. We direct the Registry to send a copy of this judgment to the Law Commission and to the Union Law Secretary, Government of India who may place it before the Hon'ble Minister for Law & Justice to take appropriate steps in the larger interest of the society.”

18. In **Neelu Chopra & Anr. vs. Bharti [(2009) 10 SCC 184]**, the Supreme Court observed:

“10. When we see the complaint, the complaint is sadly vague. It does not show as to which accused has committed what offence and what is the exact role played by these appellants in the commission of offence. There could be said something against Rajesh, as the allegations are made against him more precisely but he is no more and has already expired. Under such circumstances, it would be an abuse of the process of law to allow the prosecution

to continue against the aged parents of Rajesh, the present appellants herein, on the basis of a vague and general complaint which is silent about the precise acts of the appellants.

11. The High Court has merely mentioned that the allegations in the complaint are of retaining jewellery articles in possession of the husband and the petitioners. Now if the articles were in the possession of the husband, there is no question of the present appellants being in possession of the jewellery. This is apart from the fact that it has already been expressed by us that there is no mention of the date on which the said ornaments, if any, were entrusted to the appellants or even the date when they were demanded back and were refused to be given back by the appellants or any one of them. Insofar as the offence under Section 498-A IPC is concerned, we do not find any material or allegation worth the name against the present appellants. All the allegations appear to be against Rajesh.”

19. In Geeta Mehrotra & Anr. v. State of U.P.

[(2012) 10 SCC 741], the Supreme Court categorically observed:-

“Mere casual reference of the names of the family members in a matrimonial dispute without allegation of active involvement in the matter would not justify taking cognizance against them overlooking the fact borne out of the experience that there is a tendency

to involve the entire family members of the husband in the domestic quarrel taking place in a matrimonial dispute especially if it happens soon after the wedding.”

20. In **Arnesh Kumar vs. State of Bihar & Anr.**

[(2014) 8 SCC 273], the Supreme Court observed:

“There is phenomenal increase in matrimonial disputes in recent years. The institution of marriage is greatly revered in this country. Section 498-A of the 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 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.”

21. From what has been laid down by the Supreme Court in the decisions discussed above, it becomes abundantly clear that a duty is cast upon the court to be very cautious while summoning an accused in dowry relates cases either arising out of a complaint or an FIR. The summoning orders are not be passed

mechanically on the basis of vague allegations without necessary particulars at least against the relatives of the husband looking at the growing tendency of implicating relatives of the husband just to settle score with oblique motive.

22. Coming back to the fact of the present case, this Court is of the view that there is lack of specific and credible allegation with necessary particulars against the petitioners of the present case. On the contrary, there is evidence that the informant had never stayed in her matrimonial home and the petitioners had no knowledge about the marriage of the Nalin Singh @ Babloo with the informant. This Court does not find any reason as to why the statements of the witnesses on which the investigating agency has opined that there is lack of materials to prove culpability of the petitioners in the alleged offence be not relied upon. The husband of the informant may be at fault, but for his fault, his parents and brothers cannot be compelled to face trial.

23. It is well settled that the powers possessed by the High Court under Section 482 of the CrPC requires great caution in its exercise. In **State of Karnataka v. L. Munniswamy [(1977) 2 SCC 699]**, the Supreme Court observed:-

“The wholesome power under Section 482 CrPC entitles the High Court to quash a proceeding when it comes to the conclusion that allowing the



proceeding to continue would be an abuse of process of court or that the ends of justice require that the proceeding ought to be quashed. The High Courts have been invested with inherent powers, both in civil and criminal matters, to achieve a salutary public purpose. A court proceeding ought not to be permitted to degenerate into a weapon of harassment or persecution. In this case, the Court observed that ends of justice are higher than the ends of mere law though justice must be administered according to laws made by the legislature.”

24. In **Madhu Limaye v. State of Maharashtra [(1977) 4 SCC 551]**, a three-Judge Bench of the Supreme Court observed:-

“... In case the impugned order clearly brings out a situation which is an abuse of process of court, or for the purpose of securing the ends of justice interference of the High Court is absolutely necessary, then nothing contained in Section 397 (2) can limit or affect the exercise of the inherent power of the High Court. Such cases would necessarily be few and far between. One such case would be the desirability of the quashing of a criminal proceeding initiated illegally, vexatiously or as being without jurisdiction. The present case would undoubtedly fall for exercise of the power of the High Court in accordance with Section 482 of the 1973 Code even assuming that the invoking of the revisional power of

the High Court is impermissible.”

25. Considering the facts of the present case in the background of legal principles set out by the Supreme Court vide its decisions noted above, in the opinion of this Court allowing the prosecution to continue against the petitioners of the present case would be an abuse of the process of law.

26. Accordingly, the impugned order dated 16th March, 2013 passed by the learned Sub Divisional Judicial Magistrate, Rosera, in Trial No. 2518 of 2013, arising out of Rosera P.S. Case No. 133 of 2012, so far as petitioners are concerned, is quashed.

27. The application stands allowed to the extent indicated above.

(Ashwani Kumar Singh, J.)

Sanjeet/-

AFR/NAFR	NAFR
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