

Arising Out of PS.Case No. -53 Year- 2010 Thana -NAWADAH COMPLAINT CASE District-
NAWADA

.... PETITIONER/S

1. THE STATE OF BIHAR
2. PRITI KUMARI @ RANI D/O VISHWANATH PRASAD RESIDENT OF MOHALLA
NAI BAZAR, P.S.- BHAGWAN BAZAR, NEAR BARI MASJID, DISTRICT- SARAN
(CHHAPRA).

.... OPPOSITE PARTY/S

For the Petitioner/s : Mr. Durgesh Nandan-Advocate
For the Opposite Party/s : Mr. Dilip Kumar(A.P.P.)

05 18-07-2016

Heard learned counsel for the petitioners as well as
 onal Public Prosecutor.

2. In spite of notice, O.P. No.2 did not appear.

3. It happens to be an unfortunate case whereunder spouses are at loggerheads. Wife is the complainant. Husband, father in-law, mother in-law, cousin father in-law are the accused. After examination of witnesses before charge, the case was fixed for charge and during course thereof, petition was filed on behalf of all the accused praying therein to discharge. By the order

impugned dated 06.05.2013, the learned lower Court presided over by Sri S. K. Pandey, S.D.J.M., Nawada in Complaint Case No.53 of 2010, rejected the same, which has been challenged under the present petition.

4. Learned counsel for the petitioners has challenged the order impugned on the ground that whenever the spouses faced with bitterness in their marital life, false, frivolous litigations cropped up. That being so, the allegation whatsoever been alleged should not be accepted as a gospel truth. Apart from this, it has also been submitted that unless and until, there happens to be specific allegation against each of the accused excluding the husband, the prosecution should not be allowed to continue against those accused persons and for that, relied upon **2013(1) P.L.J.R. 10 SC (Geeta Mehrotra and another v. State of U.P. and another)**. So, submitted that the order impugned should be set aside and petitioners be discharged.

5. Learned counsel for the petitioners also raised objection over jurisdiction and to substantiate the same, it has been submitted that the Court of Nawada has got no jurisdiction to entertain the complaint petition. It has further been submitted that such plea has also been raised at the present stage, which has been rejected by the learned lower Court.



6. The learned Additional Public Prosecutor opposed the prayer and submitted that there happens to be consistent version of the witnesses during course of their examination before charge substantiating the allegation and so, there happens to be no question of discharge. Furthermore, the submission made on behalf of learned counsel for the petitioners has also been refuted on the plea that the judicial pronouncement so referred by the learned counsel for the petitioners is not at all applicable in the facts and circumstances of the present case as, the same does not happen to be relating to discharge.

7. In terms of Section 245 of the Cr.P.C., the only criteria whereupon Court is expected to adjudicate the prayer is with regard to reliability of the evidence which, if found to be un-rebutted would ultimately resultant in conviction of the accused. If there happens to be some sort of deficiency in the evidence on that score, then in that event, the accused persons would be entitled for discharge. The evidences of the witnesses whoever been examined before charge is to be scrutinized in the aforesaid background. Though, evidences of some of the witnesses have not been placed on record. However, the learned counsel for the petitioners happens to be generous one in placing those evidences and more particularly, from the evidence of PW-5, the victim as well as

evidence of PW-3 of her brother, it is evident that they have substantiated the allegation of torture, cruelty that too, over demand as well as fulfilment of dowry. However, during course thereof, it has been perceived that they have not encircled the cousin father in-law, who happens to be petitioner no.4, Prabhakar Prasad. Being an outsider to the extent of constitution of family of complainant as well as remaining accused, there should have been specific disclosure against him in case, the prosecution intended to proceed against him.

8. It has been held that objection over jurisdiction should have been taken up by the accused just after appearance. Allowing the proceeding to proceed, tantamounts to waiving the plea.

9. That being so, the order impugned relating to petitioner no.4, Prabhakar Prasad is set aside. Consequent thereupon, instant petition relating to petitioner no.4 is allowed. With regard to remaining petitioners namely Vikky @ Vikram Raj, Diwakar Prasad and Madhuri Devi, I do not find the instant petition maintainable and is accordingly, rejected.

(Aditya Kumar Trivedi, J)

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