

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.31599 of 2013

Arising Out of PS.Case No. -262 Year- 2010 Thana -ALAMGANJ District- PATNA

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Md. Khairuddin, Son of Late Jainul Haque, Resident of Village - Sahatha, Police Station - Bhagwanpur, District - Vaishali, At Present Resident of Mohalla - Near Naugarwa Masjid, Police Station - Sultanganj, District - Patna

.... Petitioner/s

Versus

1. The State of Bihar.
2. Tabassum Fatima, Wife of Fakharuddin Ali Ahmed, Daughter of Md. Jainul Haque, Resident of Village Saratha, Police Station - Dhaka, District - East Champaran, At Present Resident Of Mohalla - Sah Colony, Alamganj, Police Station - Alamganj, District - Patna, Bihar.

.... Opposite Party/s

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Appearance :

For the Petitioner/s	:	Mr. Yogesh Chandra Verma, Sr. Advocate. Mr. Rakesh Kumar, Advocate.
For the Informant	:	Mr. Arvind Kumar Mour, Advocate. Mr. Harish Kumar, Advocate. Mr. Raj Krishna Jha, Advocate.
For the State	:	Mr. Pancha Nand Pandit, APP

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CORAM: HONOURABLE MR. JUSTICE RAJENDRA KUMAR MISHRA

ORAL JUDGMENT

Date: 04-04-2017

Heard learned counsel for the petitioner and the learned counsel for the opposite party no. 2.

2. This application, under Section 482 of the Code of Criminal Procedure, is directed against the order dated 10.01.2013 passed in Alamganj P.S. Case No. 262 of 2010, whereby the Sub-Divisional Judicial Magistrate, Patna City, Patna, took cognizance of the offence under Section 498(A)/34 of the Indian Penal Code and Section 3/4 of the Dowry Prohibition Act, against the eight persons including the petitioner.

3. The facts leading to this application is that opposite party no. 2, Tabassum Fatima, gave her written report, on 01.10.2010,



at Alamganj Police Station, to the effect that her marriage was performed with Fakhruddin Ali, on 22.12.2003, as per Muslim customs. After marriage, she went at her Sasura then she was asked to convey her parents to give a flat in Patna Town. Thereafter, her husband, in-laws and other relation named in the F.I.R. started to abuse and torture her. She gave information to her parents then her father gave Rs. 5,49,000/- to her in-laws then her husband took her at Delhi at his working place but she was being still tortured by her husband at the instigation of her in-laws. She conceived pregnancy, but she was sent to Patna and she gave birth of male child and her father again gave Rs.4,51,000/- then her husband took her at Iran and after some time, she returned back to Patna and she gave birth of baby child but she was not properly cared by her husband and in-laws. On much persuasion, she was taken at Delhi, where her brother-in-law Jamuddin came and started to abuse and assault her and also took ornaments and cloths from her box and lastly, she was left at her “Maika” by her husband.

4. Learned counsel for the petitioner submits that petitioner is the brother-in-law (Nandosi) of the informant-opposite party no. 2 and he and his wife, Ajmeri Khatoon have been named in the F.I.R. without any overt act only with view to give undue pressure and for harassment.

5. Learned counsel for the opposite party no. 2 while submits that there is no illegality in the impugned order taking the



cognizance of the offence under Sections 498(A)/34 of the Indian Penal Code and Section 3/4 of the Dowry Prohibition Act but fairly conceded that the petitioner being the brother-in-law (Nandosi) of informant-opposite party no. 2 has been made accused but no overt act has been attributed against him.

6. On perusal of written report of opposite party no. 2 which is the basis of F.I.R., it appears that while petitioner, who is the brother-in-law (Nandosi) of informant-opposite party no. 2, is named in the F.I.R. but no specific overt act has been attributed against him. The name of the petitioner appears to be figured in the F.I.R. mala fide only to give undue pressure. As such, impugned order taking cognizance of the offence under Section 498(A)/34 of the Indian Penal Code and Section 3/4 of the Dowry Prohibition Act against the petitioner amount to abuse of the process of the Court.

7. Accordingly, this application is allowed. The impugned order 10.01.2013 passed in Alamganj P.S. Case No. 262 of 2010 and entire criminal proceeding in respect to petitioner is hereby quashed and this application is allowed

(Rajendra Kumar Mishra, J)

Bhardwaj/-

AFR/NAFR	
CAV DATE	
Uploading Date	
Transmission Date	

