

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.30607 of 2013

Arising Out of PS.Case No. 45 Year- 2011 Thana -RAMPUR District- GAYA

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1. Ataur Rab S/O Late Syed Abdul Rab R/O Mohalla- Near Police Line, P.S.- Rampur, District- Gaya
2. Jawed Iqbal S/O Ataur Rab R/O Mohalla- Near Police Line, P.S.- Rampur, District- Gaya
3. Aasla Khatoon W/O Ataur Rab R/O Mohalla- Near Police Line, P.S.- Rampur, District- Gaya
4. Hasib Rab @ Hasibur S/O Ataur Rab R/O Mohalla- Near Police Line, P.S.- Rampur, District- Gaya
5. Razia W/O Jawed Iqbal R/O Mohalla- Near Police Line, P.S.- Rampur, District- Gaya

.... Petitioner/s

Versus

1. The State of Bihar
2. Mumtaz Jahan Begum W/O Late Tanvir Jauhar R/O Mohalla Police Line, P.S.- Rampur, District- Gaya at present Address- Mohalla- Nagmatiya Colony, P.S.- Civil Lines, District- Gaya

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. S. Arshad Alam, Advocate
Mrs. Anjum Perveen, Advocate
For the State : Dr. Rabindra Kumar, APP
For the informant/complainant : Mr. Deepak Kumar, Advocate

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CORAM: HONOURABLE MR. JUSTICE SANJAY PRIYA

ORAL JUDGMENT

Date: 30-01-2017

Heard learned counsel for the parties.

2. This petition has been filed on behalf of the petitioners for quashing the order of cognizance dated 12.02.2013 passed by learned Judicial Magistrate, Ist Class, Gaya in G.R.No. 608 of 2011 arising out of Rampur P.S.Case No. 45 of 2011 on the basis of Protest-cum-Complaint Case No. 1927 of 2011, by which he found prima facie case against the petitioners under Sections 498A, 379 and 406 of the Indian Penal Code.

3. Learned counsel for the petitioners has submitted that



the husband of the complainant died on 04.10.2010 and the present criminal case was filed by the complainant on 01.03.2011 i.e. after about six months of his death. The police after investigation found the case untrue and submitted final form which was accepted by the learned Magistrate and thereafter the case proceeded as complaint case on the basis of protest petition and after holding enquiry under Section 202 of the Code of Criminal Procedure, the learned Magistrate has passed the impugned order.

4. Learned counsel for the opposite party no.2 has submitted that the complainant could not file police case earlier because as per Muslim custom the complainant was under Iddat period. It is further submitted that the case filed by the complainant was not being properly investigated by the police. She filed an informatory petition before the Superintendent of Police, Gaya and also protest petition before the Chief Judicial Magistrate, Gaya. The learned Chief Judicial Magistrate proceeded on the basis of protest petition and after recording S.A. of the complainant and statement of other four witnesses found prima facie case against the petitioners under Sections 498A, 379 and 406 of the Indian Penal Code.

5. Having heard learned counsel for the parties and on perusal of the order taking cognizance as also other materials available on record including the S.A. of the Complainant and statement of other four witnesses recorded during enquiry under



Section 202 Cr.P.C., which have been filed by the complainant with the counter affidavit, this Court finds that initially the Complainant was married with the son of petitioner nos.1 and 3 on 19.08.2009. The husband of the complainant unfortunately met with road accident and died on 04.10.2010. The Complainant has alleged in the complaint petition that after death of her husband, she was tortured by all the petitioners, who are parents and other family members of her deceased husband. She has also alleged that the petitioners demanded dowry and they also assaulted her.

6. In this regard, it is relevant to mention that it is not in dispute that after death of husband of the complainant on 04.10.2010, police case was filed on 01.03.2011 i.e. after about six months. It is also an admitted position that the police after investigating the case submitted final form and the case proceeded on the basis of protest petition which was treated as Complaint Petition by the learned Magistrate.

7. This Court has perused the S.A. of the Complainant and statement of all the four other witnesses recorded during enquiry which have been filed by opposite party no.2 as Annexure-C series in the counter affidavit. From perusal of the S.A. and statement of all the four witnesses, this Court finds that mere general and omnibus allegations have been levelled against all these petitioners. Learned counsel for the petitioners has relied upon a decision of the Hon'ble



Apex Court reported in **PLJR 2013(1) SC 10 (Geeta Mehrotra and Another Vs. State of U.P. and Another)** and has stated that the cognizance taken merely on omnibus and general allegation is bad in law. This Court after perusing the S.A. of the complainant and the statement of the witnesses does not find any specific allegation against these petitioners and as such no criminal offence is made out. The petitioners are the in-laws and other relatives of the deceased husband of the Complainant and continuance of the present proceeding will be an abuse of the process of Court. Hence, the order taking cognizance against these petitioners is fit to be quashed.

8. In the result, the present petition is allowed and the order of cognizance dated 12.02.2013 and the entire proceedings of G.R.No. 608 of 2011 arising out of Rampur P.S.Case No. 45 of 2011 (Complaint Case No. 1927 of 2011) are quashed.

(Sanjay Priya, J.)

Tahir/-

AFR/NAFR	
CAV DATE	
Uploading Date	06.02.2017
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