

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.33567 of 2013

Arising Out of PS.Case No. -26 Year- 2013 Thana -ASHTHWAN District- NALANDA
(BIHARSHARIFF)

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1. Krishandev Singh @ K. D. Singh S/O Late Ram Karan Singh Resident Of Mohalla- Mogalkuan, P.S.- Sohsarai, District- Nalanda
2. Smt. Vidya Devi W/O Shri Krishandev Singh Resident Of Mohalla- Mogalkuan, P.S.- Sohsarai, District- Nalanda
3. Smt. Sunaina Devi D/O Late Ram Karan Singh Resident Of Mohalla- Mogalkuan, P.S.- Sohsarai, District- Nalanda
4. Munna @ Ajay Yadav @ Ajay Krishan S/O Sri Krishandev Singh Resident Of Mohalla- Mogalkuan, P.S.- Sohsarai, District- Nalanda
5. Sanjay Yadav @ Sanjay Krishan S/O Sri Krishandev Singh Resident Of Mohalla- Mogalkuan, P.S.- Sohsarai, District- Nalanda

.... Petitioner/s

Versus

1. State Of Bihar
2. Madhu Kumari, daughter of Raj Kumar Sant Valvacharya, resident of Village & Post : Asthawan, District, Nalanda.

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Chandra Has Mishra
For the Opposite Party/s : Mr. L.K.Sharma (App)

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CORAM: HONOURABLE MR. JUSTICE VINOD KUMAR SINHA
ORAL ORDER

9 30-01-2017 Heard the parties.

The petitioners has preferred this application under Section 482 of the Cr.P.C. for quashing of the order dated 14.06.2013, passed by Chief Judicial Magistrate, Nalanda in Asthawan P.S. Case No. 26/2013 (arises out of Complaint Case No. 237(C) 2013) by which he has taken cognizance of the offences punishable under Section 498(A), 313, 323, 379, 406, 307, 506 and 34 of the Indian Penal Code as well as Section 3 and 4 of the Dowry Prohibition Act.



Prosecution case in short is that the complainant, Madhu Kumari filed a complaint petition date 27.02.2013 stating therein *inter alia* that her marriage was solemnized on 01.06.2009 with one Gorav Kumar @ Guddu, (son of petitioner no. 1) resident of Mohalla- Mogal Kuan, Sohsarai, Nalanda and at the time of marriage several articles including ornaments were given as a dowry and apart from that a cheque of Rs. 5,00,000/- (Rs. Five Lakh) was also given to Gorav Kumar @ Guddu, (son of petitioner no. 1), which was transferred in the account of petitioner no. 1. It has further been alleged that after her marriage she came to her sasural i.e. Mohalla- Mogal Kuan, Sohsarai, Nalanda, where she lived happily for four to five months along with all the accused persons but after some time petitioner no. 3, namely, Sunaina Devi aunt-in-law (Bua), started pressurizing her to bring Rs. 5,00,000/- (Rs. Five Lakhs) from her parents for construction of a house in Biharsharif, on which her family members showed their inability to fulfil the said demand of Rs. Five lakhs, thereafter, accused persons started assaulting her and stopped to provide her food and cloth and were planning to remarry the said Gorav Kumar @ Guddu, to some other girl. Further a panchayati was also held at Mohalla- Mogal Kuan, Sohsarai, Nalanda to settle the dispute but the accused persons did not agree and the



mother-in-law, petitioner no. 2 and bua, petitioner no. 3, assaulted her by fists, slaps and danda and continued to demand the said dowry of Rs. Five Lakh.

It is also her case that father-in-law and her husband abused her and assaulted her by iron rod and the other accused persons including her brother-in-law also participated in that. Further in the year 2010, the accused persons planned to kill the complainant on which she informed the witnesses of the present case but the accused persons in front of the said witnesses, abused her and asked her to fulfil the said demand and snatched her belongings including an amount of Rs. Fifty Thousand. Thereafter, the complainant went back to her parent's house on 02.02.2013 and when she came back to her sasural, the accused persons abused her and did not allow her to enter into the house and threatened that they will remarry their son to some other girl, thereafter, the complainant again came back to her parent's house.

The aforesaid complaint was referred to police under Section 156(3) of the Code of Criminal Procedure for institution and investigation of the case and on that basis Asthawan P.S. Case No. 26/2013 was registered by the police and after investigation police has submitted charge-sheet against the accused persons including petitioners. It further appears from the



record that the Chief Judicial Magistrate, Nalanda vide order 14.06.2013 dated took cognizance against all the accused persons including petitioners under Section 498(A), 313, 323, 379, 406, 307, 506 and 34 of the Indian Penal Code as well as Section 3 and 4 of the Dowry Prohibition Act, the aforesaid order taking cognizance has been challenged by the petitioners, in the present application, filed under Section 482 of the Cr.P.C.

It has been submitted on behalf of the petitioners that there is absolutely no evidence against these petitioners and as a matter of fact, it is the complainant, who is not ready to live with the petitioners and hence she made false and concocted allegations against all these petitioners. It has also been submitted that the police has not conducted the investigation properly and had not recorded the evidence of independent witnesses and submitted the charge-sheet against the accused persons including petitioners. Further submission of learned counsel is that so far as Section 307 and 313 of Indian Penal Code is concerned, there is no material available on record against the petitioners, however, still the charge-sheet has been submitted under Section 307 and 313 of Indian Penal Code without considering this facts that the petitioners are father-in-law, mother-in-law, aunt-in-law and brother-in-law and are living separately from the complainant and



her husband and they have nothing to do with the affairs of wife and husband.

It has further been submitted that there is no compliance of Section 156(3) of the Cr.P.C. and as such the order sending the case to the police under Section 156(3) Cr.P.C., is itself bad in law and not sustainable in the eye of law.

It has also been submitted that earlier this case was referred to mediation committee and mediation committee has come to a conclusion that the petitioner no. 1, is ready to give separate flat to complainant to live within two months from today and with further condition that husband of the opposite party no. 2 has agreed to live with his wife and they have also agreed for not torturing the complainant again and, thereafter, both the persons started living together. As such it clearly appears from the counter affidavit filed by the opposite party no. 2 that the accused persons including petitioner are living separately from the complainant and her husband as such the whole allegation against them has been lodged only with the purpose to drag whole family members in this case.

On the basis of the aforesaid submission, learned counsel for the petitioners has submitted that order taking cognizance is bad in law and continuation of the proceeding, will only be an



abuse of process of Court.

Heard learned A.P.P. as well as learned counsel appearing on behalf of opposite party no. 2. It has been submitted on behalf of opposite party no. 2 that earlier a mediation in this case was held in which the petitioners have agreed to give a separate house to opposite party no. 2 but no house has been given to her upto now and also they started torturing the opposite party no. 2, for which Sohsarai P.S. Case No. 192 of 2016 was registered against the petitioners except petitioner no. 3. It has further been submitted that sufficient materials are available in the case diary as well as in the F.I.R. to show a *prima facie* case against all the petitioners and on the basis of which order taking cognizance was passed by learned Chief Judicial Magistrate as such there is no illegality in the impugned order.

Having heard both sides, before coming to the merit of the case, it appears that earlier the matter was sent to the Mediation Committee and an agreement was reached between the parties and as per the agreement petitioner no. 1 had to provide a separate flat to opposite party no. 2 and it was also agreed that they would not torture the complainant again. However, it appears that the said agreement had failed as it is alleged by the complainant that in spite of agreement, the petitioners have kept



on torturing and did not provide any separate flat to her and in spite of that the complainant, only to secure her future again, went to her sasural and tried to live with the husband but she was again dragged out from her matrimonial house on 09.11.2016, for which she lodged Sohsarai P.S. Case No. 192 of 2016 against the petitioners. In spite of efforts by this Court, the Mediation between the parties has failed and another case has been lodged against the petitioners. Whatever the fact relates to occurrence after the mediation, that is not before this Court and in this Court only the order taking cognizance dated 14.06.2013, is under challenge.

Coming to the merit of the case, from perusal of the record available in case diary as well as materials collected during the course of enquiry, it appears that the petitioners used to torture her and petitioner no. 1 even used to assault the complainant and there is also allegation of demand of dowry in the case diary. From perusal of the case diary, there are sufficient materials available against the accused persons. So far submission of learned counsel for the petitioner that they were living separately. It appears from the complaint petition itself that they were living at Mohalla-Mogal Kuan, Sohsarai, Nalanda, which is the place of occurrence in the present case. Further in para 69 of the case diary, it is mentioned that I.O. as well as the complainant tried to enter the



house, but the accused persons did not allow her to enter the house. Considering all these facts it appears that there are materials available against them on the record.

So far order taking cognizance is concerned, the same can be taken on the basis of *prima facie* materials against the petitioners and in this case it appears that there are *prima facie* materials available against the petitioners and so far cognizance under Section 307 and 313 are concerned, it is always open to the petitioners to raise all these questions at the time of framing of charge before the Court concerned. It is needless to say that on the basis of the materials, charges will be framed.

In view of the above discussions, I am not inclined to interfere with the order taking cognizance dated 14.06.2013, passed by Chief Judicial Magistrate, Nalanda in Asthawan P.S. Case No. 26/2013 (arises out of Complaint Case No. 237(C) 2013).

This application is, accordingly, dismissed.

(Vinod Kumar Sinha, J)

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