

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.29477 of 2014

Arising Out of PS.Case No. -51 Year- 2008 Thana -BHAGALPUR COMPLAINT CASE District-
BHAGALPUR

- =====
1. Rajesh Prasad Singh, Son of Shiv Narayan Singh, Resident of Village Yogiya Talab, P.S. Pirpaiti, District Bhagalpur
 2. Shiv Narayan Singh, Son of Late Badhu Mahto, Resident of Village Yogiya Talab, P.S. Pirpaiti, District Bhagalpur
 3. Ashok Kumar Singh, Son of Sri Shiv Narayan Singh, Resident of Village Yogiya Talab, P.S. Pirpaiti, District Bhagalpur
 4. Wakil Singh, Son of Shiv Narayan Singh, Resident of Village Yogiya Talab, P.S. Pirpaiti, District Bhagalpur

.... Petitioners

Versus

1. The State of Bihar
2. Kalawati Devi, Wife of Rajesh Prasad Singh, Daughter of Baijnath Mahto, Resident of Village Yogiya Talab, P.S. Pirpaiti, District Bhagalpur

.... Opposite Parties

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Appearance :

For the Petitioners	:	Mr. Vishwajeet Kumar Mishra, Advocate
For the State	:	Mr. Nityanand, APP
For O.P. No.2	:	Mr. Sanjay Kumar Ghosarvey, Advocate

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CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR

ORAL JUDGMENT

Date: 09-10-2017

Heard Learned counsel for the petitioners as well as the learned counsel appearing on behalf of opposite party no.2 on the point of admission.

2. The petitioners seek quashing of cognizance order dated 05.04.2013, passed by learned Chief Judicial Magistrate, Bhagalpur in G.P.S. No.51 of 2008.

3. Learned counsel for the petitioners submits that complaint was filed by the wife before the *Gram Kachahary* and later on *Gram Kachahary* sent the complaint to the court of learned Chief Judicial Magistrate thereafter on receipt of complaint he has taken



cognizance of the offence and transferred the case to the court of another Magistrate for enquiry and trial. It is further submitted that it is very peculiar that even the offence under which cognizance has been taken is absent in the order. Contrary to that learned counsel appearing on behalf of the complainant submits that a *prima facie* case is made out under Section 498A of the Indian Penal Code against petitioner no.1-husband of the complainant and no one should be aggrieved by any act done by the court even if this error has crept in the order. Learned counsel for the petitioners in alternative argument submits that as far as petitioner nos.2, 3 and 4 are concerned, they are father of the husband and two brothers. It is also submitted that petitioner no.1 is the husband living in Delhi and other petitioners live at native village and they are not concerned with the matrimonial affair of petitioner no.1 and the complainant. Even there is no any specific allegation against these petitioners showing particular act of torture on a particular day and manner of torture.

4. Having considered the rival submissions of both sides and on perusal of the records, the Court finds that first the complaint was inadvertently filed by the wife against the accused persons before the *Gram Kachahary*. *Gram Kachahary* entertained the application, later on realizing having no jurisdiction in the matter sent the complaint to the court of Chief Judicial Magistrate, Bhagalpur. The



learned Chief Judicial Magistrate perused the complaint and took cognizance under Section 190 Cr.P.C. and transferred the case to the Magistrate for enquiry and trial under Section 192 Cr.P.C. Section 190 of the Code of Criminal Procedure reads as follows:

“190. Cognizance of offences by Magistrates.–(1)

Subject to the provisions of this Chapter, any Magistrate of the first class, and any Magistrate of the second class specially empowered in this behalf under sub-section (2), may take cognizance of any offence–

(a) upon receiving a complaint of facts which constitute such offence;

(b) upon a police report of such facts;

(c) upon information received from any person other than a police officer, or upon his own knowledge, that such offence has been committed.

(2) The Chief Judicial Magistrate may empower any Magistrate of the second class to take cognizance under sub-section (1) of such offences as are within his competence to inquire into or try.”

5. The term cognizance has not been defined expressly in the Criminal Procedure Code. However, cognizance means taking notice of the offence by the court of competent jurisdiction. Cognizance in view of Section 190(a) Cr.P.C. is taken the moment the Magistrate peruses the facts mentioned in the complaint disclosing offence, which means he has taken cognizance of the offence. Thereafter he may examine the complainant and witnesses present there under Section 200 Cr.P.C. Except in two circumstances such



examination is not necessary by him if a public servant acting or purporting to act in discharge of his official duties has made the complaint or the court has instituted such complaint. Second situation is that if C.J.M. or any Judicial Magistrate of 1st Class empowered in this behalf by C.J.M. as to taking cognizance makes over the case for enquiry and trial to another Magistrate under Section 192 Cr.P.C. If the Magistrate makes over the case to another Magistrate under Section 192 Cr.P.C. after examining the complainant and the witnesses, the later Magistrate need not re-examine those witnesses. In the present case, the learned Chief Judicial Magistrate has taken only the cognizance of the offence and made over the case to another Magistrate for enquiry and trial and the examination of the complainant and the witnesses are to be done by the Magistrate who has received the complaint after making it over. In the cognizance order Section 498A is not mentioned due to inadvertence moreover it does not prejudice the case of the defence in any manner. The allegation levelled in the complaint *prima facie* discloses the offence under Section 498A of the Indian Penal Code and Sections 3 and 4 of the Dowry Prohibition Act only against the husband-petitioner no.1 but not against the petitioner nos.2, 3 and 4, who are father and brothers of petitioner no.1, the husband lives in Delhi and petitioner nos.2, 3 and 4 live at native village and they are not concerned with



day to day matrimonial affairs of the husband and wife. Moreover the allegation mentioned in the complaint against petitioner nos.2, 3 and 4 in particular are not specific, only bald and sweeping allegation is levelled against them, neither specific date of torture nor any particular day of making demand is mentioned in the complaint. In the case of *Geeta Mehrotra & Anr. Vs. State of U.P. & Anr.*, reported in 2013(1) PLJR 10(SC), the Apex Court has held that introduction of the names of relatives of the husband in a casual manner does not attract any prima facie offence of Section 498A of the Indian Penal Code. In *Geeta Mehrotra* (supra) case the Apex Court has held as follows:

“But as the contents of the FIR does not disclose specific allegation against the brother and sister of the complainant’s husband except casual reference of their names, it would not be just to direct them to go through protracted procedure by remanding for consideration of the matter all over again by the High Court and make the unmarried sister of the main accused and his elder brother to suffer the ordeal of a criminal case pending against them specially when the FIR does not disclose ingredients of offence under Sections 498A/323/504/506, IPC and Sections 3/4 of the Dowry Prohibition Act.”

6. So, applying the same principle in the present case, only except casual reference of the names of the petitioner nos.2, 3 and 4 in the complaint, no any specific allegation is disclosed against them, so the criminal proceeding against petitioner nos.2, 3 and 4,



namely, Shiv Narayan Singh, Ashok Kumar Singh and Wakil Singh are hereby quashed in G.P.S. No.51 of 2008 (Trial No.3607 of 2013) inclusive of the cognizance order dated 05.04.2013 with respect to these petitioners only whereas the prayer of quashing of the criminal proceeding against the husband, petitioner no.1, namely, Rajesh Prasad Singh is dismissed as *prima facie* case under Section 498A of the Indian Penal Code is made out against him and the trial court is directed to do the trial expeditiously in accordance with law.

7. The quashing application is accordingly, disposed of.

(Arun Kumar, J.)

S.Kumar/-

AFR/NAFR	NAFR
CAV DATE	NA
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