

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.32567 of 2014

Arising Out of PS. Case No.-3140 Year-2013 Thana- PATNA COMPLAINT CASE District-
Patna

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1. Rekha Devi Wife of Naga Ram
 2. Naga Ram Son of Late Ganesh Ram
 3. Ramesh Kumar Son of Naga Ram,
 4. Nupur Kumari Daughter of Naga Ram All resident of Raj Guru Chowk, P.S.-Bettiah, Town, Dist.-West Champaran

... .. Petitioner/s

Versus

1. State of Bihar
2. Sumita Shree Daughter of Sri Sudhir Das, Wife of Sri Brijesh Kumar Resident of Laxmi Apartment, 306/A, New Chitragupta Nagar, P.S.-Kankarbagh, Dist.-Patna

... .. Opposite Party/s

with
Criminal Miscellaneous No. 55922 of 2015

Arising Out of PS. Case No.-3140 Year-2013 Thana- PATNA COMPLAINT CASE District-
Patna

Brijesh Kumar

... .. Petitioner/s

Versus

State Of Bihar & Anr

... .. Opposite Party/s

Appearance :

(In Criminal Miscellaneous No. 32567 of 2014)

For the Petitioner/s : Mr. Rajendra Kumar Jain, Adv

For the Opposite Party/s : Mr. MD. A.HAQUE SAHARA(APP)

(In Criminal Miscellaneous No. 55922 of 2015)

For the Petitioner/s : Mr. Rajendra Kumar Jain, Adv

For the Opposite Party/s : Mr. BISHESHWAR RAM (APP)

CORAM: HONOURABLE MR. JUSTICE S. KUMAR

ORAL JUDGMENT

Date : 01-11-2017



Heard learned counsel for the parties.

Both the petitions under Section 482 of the Cr.P.C have been filed for quashing the order dated 24.02.2014 passed by the Judicial Magistrate 1st Class, Patna in Complaint Case No. 3140(C) of 2013 taking cognizance under Section 498A of the I.P.C against the petitioners.

Briefly stated, the facts of the case is that complainant-opposite party no. 2 was married to Brijesh Kumar on 24.02.2012 as per hindu rites and customs at Patna. At the time of marriage, parents of complainant-opposite party no. 2 gave Rs. 7 Lakhs as gift through account, 7.5 Lakhs cash for the purchase of Indigo Car, 7 bhar gold and other house hold articles along with furnitures and T.V. Even thereafter, after marriage demand of Flat at Patna was made and on account of non fulfillment of the said demand the petitioners started torturing complainant-opposite party no. 2. On 02.12.2012, when the brother of complainant-opposite party no. 2 went to see her sister, all the accused-petitioners abused him and ousted complainant-opposite party no. 2 from her matrimonial house at Bettiah and at present she is residing at Patna with her parents.

The learned court below after examining the complainant on S.A. and recording the statement and inquiry of



witnesses in support of the complaint case, took cognizance of the offence under Section 498A of the Indian Penal Code by order dated 24.02.2014 against all the accused persons in a mechanical manner.

In Criminal Miscellaneous No. 32567 of 2014, the petitioner no. 1 is the Mother-in-Law, petitioner no. 2 is the Father-in-Law, petitioner no. 3 is the Devar and petitioner no. 4 is the Sister-in-Law of the complainant-opposite party no. 2. The Sister-in-Law of complainant-opposite party no. 2, studies in B.H.U. Varanasi from the year 2008 and thereafter went to Delhi for higher studies. She was married in the year 2013 and since then she lives at her Sasural in Deoria (U.P.) with her husband, who is posted in West Bengal. It has been submitted on behalf of the petitioners that there has been no demand of dowry or any torture committed on Opposite Party No. 2, but the whole story of demand of dowry and torture is manufactured and concocted in order to harass the entire family of the petitioners.

The husband is the petitioner in Criminal Miscellaneous No. 55922 of 2015, who had filed Matrimonial Case No. 391 of 2012 in the court of Principal Judge, Family Court, Bettiah, West Champaran under Section 9 of the Hindu



Marriage Act for restitution of conjugal rights in which case Opposite Party No. 2 has already appeared. Allegations made against the petitioner are false and baseless and entire family has been made accused in this case.

It has been stated by the Opposite Party No. 2 in her complaint petition that her marriage was solemnized on 24.02.2012 with accused no.1 Brijesh Kumar, as per Hindu rites and customs and after marriage complainant-opposite party no. 2 went to her matrimonial home and she was kept in proper manner for one month but thereafter accused persons started demanding Flat in Patna and for non fulfillment of which, she was being harassed and tortured. Accused no. 1 is working on the post of Assistant Professor-cum-Junior Scientist at Agwanpur Agriculture College, Saharsa. It has further been stated by the complainant that on 23.05.2012 witness nos. 1 and 3 went to the matrimonial house of the complainant-opposite party no. 2, to know about her welfare, and on seeing her Father and Brother, complainant-opposite party no. 2 started weeping and told the entire story of torture. Witness no. 1 and witness no. 3 prayed to the accused persons to keep the complainant in proper manner and witness no. 3 showed his inability to fulfill the demand of Flat at Patna and on 24.05.2012, the witness nos.



1 and 3 returned back from the matrimonial home of the complainant. On that evening itself, the complainant was brutally assaulted by fists, slaps and danda by the accused nos. 3, 4 and 5 and on 26.05.2012 when the accused no. 2 came to Bettiah in the evening he also became furious over the complainant, after hearing that the complainant had narrated the entire story of torture to her father and brother, thereafter she was also assaulted by accused no. 2. On 02.12.2012, the witness no. 1 went to Bettiah to see her sister, in presence of witness no. 1 all the accused persons abused and assaulted the complainant and husband-accused no. 1 ousted her from her matrimonial home and was told that unless and until demand of Flat at Patna is fulfilled, she would not be allowed to live in the matrimonial house and thereafter complainant-opposite party no. 2 left for Patna. It has further been stated in the complaint petition that she was not even allowed to get the belongings including her ornaments from her matrimonial house and all her stridhan are with the accused persons.

The court below after perusal of complaint petition, S.A. of the complainant, statement of witnesses recorded during inquiry, found prima facie case made out against the accused persons and sufficient materials to proceed



against them, and took cognizance under Section 498A of the Indian Penal Code, However, no sufficient material was found to proceed under any other section as mentioned in the complaint petition.

Criminal Miscellaneous No. 55922 of 2015 has been filed by Brijesh Kumar, who is accused no. 1 and husband of the complainant-opposite party no. 2 whereas Criminal Miscellaneous No. 32567 of 2014, had been filed by four petitioners. Petitioner no. 1 is the Mother-in-Law, petitioner no. 2 is the Father-in-Law and petitioner no. 3 is the Brother-in-Law and petitioner no. 4 is the married Daughter-in-Law.

From the statement made in the complaint petition as well as S.A. of complainant and witnesses examined on behalf of the complainant, no offence as alleged has been committed within the territorial jurisdiction of Patna. All witnesses have complained that the offence has been committed within the territorial jurisdiction of Bettiah, and as such the court at Patna lacks territorial jurisdiction to take cognizance of the offence against the petitioners. The entire family of the husband-petitioner have been made accusd in this case and even petitioner no. 3 Brother-in-Law who lives in his native village and petitioner no. 4 Nupur Kumari, who is married and lives



with her husband in West Bengal, had also been made accused by the complainant-opposite party no. 2.

The Apex Court as well as this Court in a number of cases arising out of offence committed under Section 498A of the Indian Penal Code has held that unless and until any offence or part of offence is committed within the territorial jurisdiction of the Court, no cognizance of the offence can be taken by such court who lack territorial jurisdiction and only those court where offence or part of offence has been committed has territorial jurisdiction to take cognizance of the offence.

There has been amendment under Section 202 of the Cr.P.C by Amendment Act, 2005. Section 202 of the Cr.P.C along with amendment reads as follows:-

"202. Postponement of issue of process.—(1)

Any Magistrate, on receipt of a complaint of an offence of which he is authorised to take cognizance or which has been made over to him under section 192, may, if he thinks fit, 1[and shall, in a case where the accused is residing at a place beyond the area in which he exercises his jurisdiction,] postpone the issue of process against the accused, and either inquire into the case himself or direct an investigation to be made by a police officer or by such other person as he thinks fit, for the purpose of deciding whether or not



there is sufficient ground for proceeding:

Provided that no such direction for investigation shall be made,—

(a) where it appears to the Magistrate that the offence complained of is triable exclusively by the Court of Session; or

(b) where the complaint has not been made by a Court, unless the complainant and the witnesses present (if any) have been examined on oath under section 200.

(2) In an inquiry under sub-section (1), the Magistrate may, if he thinks fit, take evidence of witnesses on oath:

Provided that if it appears to the Magistrate that the offence complained of is triable exclusively by the Court of Session, he shall call upon the complainant to produce all his witnesses and examine them on oath.

(3) If an investigation under sub-section (1) is made by a person not being a police officer, he shall have for that investigation all the powers conferred by this Code on an officer in charge of a police station except the power to arrest without warrant.

(Note) Amendment Act, 2005.- False complaints are filed against persons residing at far off places simply to harass them. In order to see that innocent persons are not harassed by unscrupulous persons, this clause seeks to amend sub-section (1) of section 202 to make it obligatory upon the Magistrate that before summoning the accused residing beyond his



jurisdiction he shall inquire into the case himself or direct investigation to be made by a police officer or by such other person as he thinks fit, for finding out whether or not there was sufficient ground for proceeding against the accused."

Learned counsel for the petitioners relies upon a judgment in the case of **Reference from District & Sessions Judge, Siwan vs Suo-Motu** reported in **2017(2) PLJR 981**, upon reference being made and after considering judgment of Apex Court, reference has been answered in paragraph no. 18, which reads as follows:-

"18. Having discussed thus, the answer, in my view, to the reference would be that mental agony to an estranged wife, ousted from her in-laws place and living in a different district, cannot be said to be continuation of offence, punishable under Section 498-A of the IPC, and her living in a different district, cannot be said to be a consequence of physical and mental torture meted out to her at her in-laws place, so as to create territorial jurisdiction of the Court of the district in which she is living, unless there is specific case of physical or mental torture at the place where she is living, apart from her in-laws' place. Merely, on the ground that the estranged wife is living within the territorial jurisdiction of a Court, such court cannot inquire into, take cognizance or try the case under Section 498-A of the IPC where the offence of demand of



dowry and torture by the accused persons is said to have been committed at her in-laws' place, situate in a different district."

Under the facts and circumstances of the present case, the order taking cognizance dated 24.02.2014 is set aside and the case is remanded to the court below to consider the issue of territorial jurisdiction on the basis of materials available before the court and judgment and orders passed by the Apex Court, as well as this Court and if the court feels that it lacks territorial jurisdiction and it finds that the court is not competent to take cognizance of the offence, it may return the plaint to the complainant to be presented in competent court having territorial jurisdiction over the matter in accordance with Section 201 of the Code of Criminal Procedure.

Both the petitions are allowed.

(S. Kumar, J)

ranjan/-

AFR/NAFR	NAFR
CAV DATE	N.A.
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