

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.47469 of 2013

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1. Md. Ghulam Mustafa Ansari @ Md. Mustafa Ansari S/O Peer Mohammad,
2. Peer Mohammad, S/O Late Karim Mian
3. Tahrin Khatoon @ Tahrin Nisha W/O Peer Mohammad
4. Sairun Nisha W/O Sadik Ansari
5. Nurani Khatoon W/O Md. Ghulam Mustafa Ansari
All resident Of Village- Shekhpura, P.S.- Goh, District- Aurangabad.

.... Petitioners

Versus

1. The State Of Bihar
2. Mahbooba Khatoon @ Mahbuza Khatoon @ Mahafhooga Khatoon W/O Md. Ghulam Mustafa Ansari @ Mustafa Ansari, D/O Late Habib Ansari, R/O Village- Shekhpura, P.S.- Karpi, District- Arwal.

.... Opposite Parties

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Appearance :

For the Petitioner/s : Mr. Vishal Saurabh

For the Opposite Party/s : Mr. Uday Chandra Pd.(App)

For the O.P.No. 2 : Mr. Shakib Ayaz, ADvocate

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CORAM: HONOURABLE MR. JUSTICE JITENDRA MOHAN SHARMA

ORAL ORDER

5 28-04-2017 This Criminal Miscellaneous application has been filed for quashing the order dated 21.07.2008 including the subsequent proceeding of the case passed by the learned S.D.J.M., Jehanabad in Complaint Case No. 480 of 2008 Trial No. 444 of 2013 whereby and whereunder the learned S.D.J.M., Jehanabad finding prima facie case to be made out under Sections 323, 498A, 494 of the Indian Penal Code against the petitioner no. 1 and under Sections 323 and 498A of the Indian Penal Code against rest of the accused persons namely, petitioners no. 2 to 5 summons have been ordered to be issued.



Heard learned counsel for the petitioners and learned counsel for the State. O. P. No. 2 has died and her no heir has come forward.

O. P. No. 2 who is now dead filed this Complaint Case No. 480 of 2008 alleging that she was married to one Md. Ghulam Mustafa Ansari, petitioner no. 1, according to Muslim rites and rituals 25 years ago and after marriage she lead happy married life but after five years the petitioner no. 1 married to petitioner no. 5 against her will. Somehow or the other she managed to live at her matrimonial house, she also gave birth to a male child ten years back but since last five years the complainant is residing at her matrimonial house along with her mother-in-law, father-in-law and petitioner no. 1 often comes there and gave money. Since last two years the husband of the complainant stopped giving money and refused to keep her at matrimonial home and lastly on 21.06.2008 she was abused by them and ousted from the house. Then, she went to the house of her husband where he was posted and residing with her Sautan, there also she was ousted from the house then the Complaint Case was lodged. After examination of complainant on solemn affirmation and after examination of inquiry witnesses the learned S.D.J.M. passed the impugned order.



Submission on behalf of the petitioners is that in the complaint petition there is no allegation for demanding dowry. The only allegation is that maintenance was stopped by the petitioner no. 1 and further the accused persons ousted her from in-laws house.

Learned APP opposes the submission by submitting that the petitioner no. 1 performed marriage with petitioner no. 5 against the will of the complainant and further they tortured and assaulted her and did not provide food and clothes and lastly they ousted her from the in-laws house, so, the learned Magistrate has rightly passed the order, there is no illegality, incorrectness or impropriety in the said order.

Having considered the submissions urged at the bar, going through the records and noticing that the complainant in her statement on solemn affirmation and further the inquiry witnesses have supported the allegation as made out in the complaint petition, I find that learned S.D.J.M. has rightly passed the order and there is no illegality, incorrectness and impropriety in the order taking cognizance. At the time of taking cognizance the Magistrate is only required to see as to whether on the basis of materials collected during inquiry prima facie offence is made out or not. Here, learned S.D.J.M. after finding prima facie case to be



made out has passed the order for summoning the accused. There is no illegality, incorrectness or impropriety in the said order. The defence of the accused cannot be adjudged at this stage. Meticulous scrutiny of the statement cannot be done at this stage. The proper stage is at the time of framing charge.

In the facts and circumstances stated above, finding no merit in this Criminal Miscellaneous application, the same is hereby dismissed.

(Jitendra Mohan Sharma, J)

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