

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.49422 of 2013

Arising Out of PS.Case No. -4 Year- 2009 Thana -AHIAPUR District- MUZAFFARPUR

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1. Shushila Devi, W/o Ranjeet Pathak
2. Ranjeet Kumar Pathak @ Ranjeet Pathak, S/o Keshav Pathak
3. Mukhlal Pathak, S/o Keshav Pathak
All residents of Village - Nayagaon, Pathak Tola, P.S.- Nayagaon, District - Saran (Chapra)
4. Pintu Kumar Pandey @ Pintu Kumar, S/o Kishori Pandey Resident of Village - Ekma, P.S.- Ekma, District - Saran, (Chapra)
..... Petitioners

Versus

1. The State of Bihar
2. Priyanka Pandey, W/o Rajeev Ranjan Kumar Pandey, D/o Sachidanand Tiwary
Resident of Village - Kolhuwa Paigamberpur, P.S. - Ahiyapur, District- Muzaffarpur
..... Opposite Parties

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Appearance :

For the Petitioner/s : Md. Shahnawaz Ali, Advocate
For the Opposite Party No.1 : Mr. Raj Ballabh Singh, APP
For the Opposite Party No.2 : Mr. Hari Kishore Thakur, Advocate

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 22-02-2017

This application under Section 482 of the Code of Criminal Procedure (for short 'CrPC') has been filed by the petitioners for quashing the impugned order dated 20.09.2013 passed by the learned Judicial Magistrate-1st Class, Muzaffarpur in Ahiyapur P.S. Case No. 4 of 2009 corresponding to G.R. No. 41 of 2009 whereby the application filed on behalf of the petitioners under Section 239 of the CrPC seeking discharge from the case has been dismissed.

2. According to the prosecution case, the informant



Priyanka Pandey, a resident of village-Kolhua Paigambarpur, P.S.-Ahiapur, District-Muzaffarpur, was married to one Rajeev Ranjan Kumar Pandey on 11th of July, 2001 according to the Hindu rites, rituals and customs. After marriage, she was brought to her sasural at village-Ekma, P.S.-Ekma, District-Saran (Chapra) where she spent her normal married life for some time, whereafter her husband started coercing her to bring Rs.8-10 lakhs from her maikhe so that he may buy a house at Patna. When she said that the financial condition of her father was not sound and it would not be proper for her to demand money from him, her husband, who was in service in Railway took a house on rent in Hajipur and started living there. The informant refused to stay with him at Hajipur, as she apprehended that she may be killed by her husband. Subsequently, her husband was posted at Muzaffarpur. He started living there in Railway quarter. When her father met him there, he started abusing him in her presence. Finding no way out, her father contacted the S.H.O. of Brahmpura Police Station. By the time, the S.H.O. came at the Railway quarter, her husband had left the house. The S.H.O. brought her to the Police Station and talked to her husband on his mobile phone. He told him to take back his wife. Though she waited for about two hours in the Police Station along with her father, her husband did not turn up. Thereafter, her father took her to his own



house. In the same night her husband took away all his belongings from the Railway quarter and vacated the same. It is stated that the informant was also blessed with a baby out of the wedlock. An information was also given by her to the Deputy Inspector General, Tirhut Range in respect of cruelty being meted out upon her. When her husband came to know about the complaint made to the Deputy Inspector General, he became angry and tried to set her on fire with the help of his father and other relatives on 05.03.2008. He abused and assaulted her and forcibly took away their daughter on that day. On 25.04.2008, an unknown person informed the informant that her husband had lodged a case against her and her relatives in the Hajipur Civil Court. She also came to know that her husband was keeping another lady at Hajipur and was claiming her as his wife.

3. On the basis of the aforesaid allegations made by the informant Priyanka Pandey, Ahiyapur P.S. Case No. 4 of 2009 was registered under Sections 494 and 498-A of the Indian Penal Code against Rajeev Ranjan Kumar Pandey, husband of the informant, his father Dahari Pandey and the petitioners of the present case.

4. The police investigated the case and on completion of investigation charge-sheet was submitted under Sections 498-A read with 34 of the Indian Penal Code against all the accused persons



named in the First Information Report (for short 'F.I.R.').

5. On perusal of the F.I.R., the statement of the witnesses recorded under Sections 161(1) of the CrPC and the police report submitted under Section 173(2) of the CrPC, the learned Magistrate took cognizance of the offence punishable under Section 498-A/34 of the Indian Penal Code and summoned the accused persons to face trial.

6. After compliance of the mandatory provisions prescribed under Section 207 of the CrPC, when the matter was fixed for framing of charge, an application under Section 239 of the CrPC was filed by the petitioners seeking their discharge from the case. The learned Magistrate, after hearing the parties, rejected the afore-stated application filed under Section 239 of the CrPC vide order dated 20.09.2013 and directed the petitioners to be present before the court for framing of charge.

7. The aforesaid order dated 20.09.2013 is under challenge in the present case.

8. Learned counsel for the petitioners submitted that initially the informant lived at her matrimonial house with her husband Rajeev Ranjan Kumar Pandey and father-in-law Dahari Pandey at village-Ekma in Saran district. Subsequently, she was living at Muzaffarpur where her husband was posted as a Train



Ticket Examiner and later on the husband of the informant started living at Hajipur. He submitted that at no point of time the petitioners were living together with the informant or her husband. He submitted that from perusal of the F.I.R., it would be evident that the informant had made complaint to the Officer-in-Charge of the Police Station and the Deputy Inspector General of Police, Tirhut Range before filing the F.I.R., but in those applications she did not make any allegation against the petitioners of the present case. However, in the F.I.R., which was recorded on the basis of written report of the informant, the petitioners have also been named in order to put pressure upon Rajeev Ranjan Kumar Pandey. He submitted that the petitioners have been named in the F.I.R. by way of afterthought and the allegations made against them are quite vague, general and omnibus.

9. On the other hand, learned counsel for the opposite party no.2 and learned counsel for the State submitted that allegations made against the petitioners of the present case in F.I.R. do constitute offence under Section 498-A/34 of the I.P.C. On investigation, the police found those allegations to be true and submitted charge-sheet against the petitioners also. The learned Magistrate, after finding a prima facie case to be made out against the petitioners along with the husband of the informant and his father



took cognizance of the offence. They submitted that since there are allegations that the petitioners also subjected the informant of the case to cruelty for non-fulfilment of demand of dowry, it cannot be said that the charges are groundless and, hence, the learned Magistrate has rightly rejected their application for discharge made under Section 239 of the CrPC.

10. I have heard learned counsel for the parties and perused the record.

11. Admittedly, the petitioners no. 1 to 3 are residents of different villages of Chapra District whereas the entire occurrence is alleged to have taken place either at the matrimonial house of the informant at village-Ekma or in the Railway quarter at Muzaffarpur or at Hajipur.

12. The petitioner no.1 Shushila Devi happens to be sister of the husband of the informant whereas petitioner no.2 Ranjeet Kumar Pathak @ Ranjeet Pathak is her husband and petitioner no.3 Mukhlal Pathak is the elder brother of the petitioner no.2 Ranjeet Kumar Pathak. It would be evident that petitioner no.4 Pintu Kumar Pandey @ Pintu Kumar is nephew (Bhagina) of the husband of the informant.

13. It has rightly been pointed out by the learned counsel for the petitioners that initially when the complaint was



made to the Officer-in-Charge of the police station and the Dy. Inspector General of Police, Tirhut Range by the informant, the complicity of the petitioners in any act of omission or commission was not alleged.

14. On perusal of the F.I.R. and the statement of witnesses recorded under Section 161 of the CrPC in the case diary, it would be evident that specific allegations have been made against the husband Rajeev Ranjan Kumar Pandey only. The allegations against the petitioners have been made in the concluding portion of the F.I.R., which are vague and omnibus in nature. Further, the alleged incident in presence of the petitioners is said to have taken place on 5th March, 2008, but the information in this regard was given to the police on 4th January, 2009. Furthermore, in the statement of witnesses recorded under Section 161(3) of the CrPC, omnibus allegations have been made against the petitioners without giving any time and date of incident. There is nothing on record to suggest that the petitioners stayed with the informant either in her matrimonial home or at Muzaffarpur or at Hajipur.

15. In absence of any specific role ascribed to any of the petitioners in the F.I.R. or in the statements recorded under Section 161(3) of the CrPC during investigation, this Court is of the considered opinion that their implication is by way of an



afterthought.

16. In **Kans Raj vs. State of Punjab & Ors.** [AIR 2000 SC 2324], a three-Judge Bench of the Supreme Court observed:

“For the fault of the husband, the in-laws or the other relations cannot, in all cases, be held to be involved in the demand of dowry. In cases where such accusations are made, the overt acts attributed to persons other than husband are required to be proved beyond reasonable doubt. By mere conjectures and implications such relations cannot be held guilty for the offence relating to dowry deaths. A tendency has, however, developed for roping in all relations of the in-laws of the deceased wives in the matters of dowry deaths which, if not discouraged, is likely to affect the case of the prosecution even against the real culprits. In their over enthusiasm and anxiety to seek conviction for maximum people, the parents of the deceased have been found to be making efforts for involving other relations which ultimately weaken the case of the prosecution even against the real accused as appears to have happened in the instant case”.

17. In **Arnesh Kumar vs. State of Bihar and Anr.** [(2014) 8 SCC 273], the Supreme Court has observed: *“There is a phenomenal increase in matrimonial disputes in recent years. The institution of marriage is greatly revered in this country. Section*



498-A IPC was introduced with avowed object to combat the menace of harassment to a woman at the hands of her husband and his relatives. The fact that Section 498-A IPC is a cognizable and non-bailable offence has lent it a dubious place of pride amongst the provisions that are used as weapons rather than shield by disgruntled wives. The simplest way to harass is to get the husband and his relatives arrested under this provision. In a quite number of cases, bed-ridden grand-fathers and grand-mothers of the husbands, their sisters living abroad for decades are arrested”.

18. In **Preeti Gupta & Anr. vs. State of Jharkhand & Anr.** [AIR 2010 SC 3363], the Supreme observed: *“The tendency of implicating husband and all his immediate relations is also not uncommon. At times, even after the conclusion of criminal trial, it is difficult to ascertain the real truth. The courts have to be extremely careful and cautious in dealing with these complaints and must take pragmatic realities into consideration while dealing with matrimonial cases. The allegations of harassment of husband's close relations who had been living in different cities and never visited or rarely visited the place where the complainant resided would have an entirely different complexion. The allegations of the complaint are required to be scrutinized with great care and circumspection. Experience reveals that long and protracted criminal trials lead to rancour, acrimony and*



bitterness in the relationship amongst the parties. It is also a matter of common knowledge that in cases filed by the complainant if the husband or the husband's relations had to remain in jail even for a few days, it would ruin the chances of amicable settlement altogether. The process of suffering is extremely long and painful”.

19. In **Neelu Chopra & Another vs. Bharti** [AIR 2009 SC (supp.) 2950], the Supreme Court observed: *“It does not show as to which accused has committed what offence and what is the exact role played by these appellants in the commission of offence. There could be said something against Rajesh, as the allegations are made against him more precisely but he is no more and has already expired. Under such circumstances, it would be an abuse of process of law to allow the prosecution to continue against the aged parents of Rajesh, the present appellants herein on the basis of vague and general complaint which is silent about the precise acts of the appellants”.*

20. Thus, it would be evident that the Supreme Court has repeatedly expressed its concern with regard to false implication of relatives of husband in cases under Section 498-A of the Indian Penal Code. The Supreme Court has also taken judicial notice of the fact that there is a growing tendency of false implication of those relatives of husband, who live separately.



21. Coming back to the facts of the present case, for the reason assigned, hereinabove, I am of the considered opinion that allowing the prosecution to continue against the petitioners would be nothing but an abuse of the process of court.

22. Accordingly, the impugned order dated 20.09.2013 passed by the learned Judicial Magistrate-1st Class, Muzaffarpur in Ahiyapur P.S. Case No. 4 of 2009 corresponding to G.R. No. 41 of 2009, is set aside. The petitioners, namely, Sushila Devi, Ranjeet Kumar Pathak @ Ranjeet Pathak, Mukhlal Pathak and Pintu Kumar Pandey @ Pintu Kumar are discharged from the aforesaid case.

23. Consequently, the application stands allowed.

(Ashwani Kumar Singh, J.)

Sanjeet/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	03.03.2017
Transmission Date	NA

