IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.52624 of 2013

Arising Out of PS.Case No. -148 Year- 2012 Thana -DHAKA District- EASTCHAMPARAN(MOTIHARI)

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1. Dharmendra Kumar Jha son of Achutanand Jha resident of Village- Bhandar, P.S.-Dhaka, District- East Champaran presently residing at 412, Airforce station, New Delhi.
2. Rinku Jha @ Renku Devi wife of Dharmendra Kumar Jha resident of Village- Bhandar, P.S.-Dhaka, District- East Champaran presently residing at 412, Airforce station, New Delhi.
3. Achutanand Jha son fo Late Jgdish Jha Dharmendra Kumar Jha son of Achutanand Jha resident of Village- Bhandar, P.S.-Dhaka, District- East Champaran presently residing at 412, Airforce station, New Delhi.

.... Petitioner/s

Versus

1. The State of Bihar
2. Archana Devi daughter of Late chjedi Thakur and wife of Jitendra Kumar Jha resident of village-Vishunpur, P.S.- Kataha, District- Muzaffarpur.

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Mrigank Mauli, Adv
Mr. Prince Kuamr Mishra, Adv.
Mr. Sanket

For the Opposite Party/s : Mr. Parmanand Kumar (App)

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CORAM: HONOURABLE MR. JUSTICE VINOD KUMAR SINHA

ORAL ORDER

4 20-01-2017 The petitioners have preferred this application under Section 482 of the Code of Criminal Procedure for quashing order dated 04.09.2013 passed by the Sub-divisional Judicial Magistrate, Motihari in Dhaka P.S.Case No.148 of 2012 wherein the learned court below has been pleased to accept the charge-sheet against the petitioners and takes cognizance under Sections 498(A), 323 and 504 of the Code of Criminal Procedure read with Section 34 of the Indian Penal Code.

At the very outset, it has been informed by the learned counsel for the petitioners that petitioner no.3 died during the pendency of the case, as such the allegation against the petitioner no.3 is concerned, it has become infractuous.

The prosecution story in short is that the Opposite party no.2 has filed a Complaint Case No.524 of 2012 stating therein that *inter alia* that she was married to the petitioner no.1, Jitendra Kumar on 4.3.2009 and that her family members provided dowry as per their status and ability. It is alleged that the petitioner no.3 being father-in-law, petitioner no.2 being brother-in-law (*Dewar*) created lots of obstacles in the marriage and insisted for providing Alto Car but after much persuasion, the marriage was solemnized. On 19.11.2009 "Bidai" was fixed and her husband stayed at their house thrice between 4.3.2009 and 19.11.2009 and during that course he insisted for money, car and gold, and the demand was unanimous decision of the entire family and on 19.11.2009, the husband along with this brother and father-in-law came and again demanded the money and Car and after much persuasion agreed to take her to her "*Sasural'* but just after two days, they subjected her to cruelty and the motivating force was her mother-in-law, accused no.4 to the extent that she was physically assaulted, denied food till very late and she was also abused at the instigation of her mother-in-law. She also alleged that her husband had illicit relationship with accused no.6 . It is also alleged that petitioner no.1 is in service in Air-force and he was at home for 10 days after 'Bidai' i.e. 19.11.2009 and he was also involved in putting the complainant in trouble. She was subjected to the torture by throwing tea on her and accused no.1 and 3 to 6 also tried to strangulate her and also tried to burn her by spring killing K.oil and before they could light afire, his brother and his brother-in-law (*Bahnoie*) appeared and both were assaulted and locked in the house but after intervention of the people, they were allowed to go home on 20.12.2009 and since then she is at her maternal place and repeated efforts in the month of June, 2011.

The aforesaid complaint was referred to the police for institution of the F.I.R. and for investigation under Section 156 (3) of the Code of Criminal Procedure Code and on the basis of which, Dhaka P.S.Case No.142 of 2012 dated 21.7.2012 was instituted against the petitioner under Section 498A, 323, 307, 384, 406, 504, 34 of the Indian Penal Code and Sections 3 and 4 of the Dowry Prohibition Act. It further appears that after investigation, the police submitted charge-sheet against the petitioners and other accused persons and the learned S.D.J.M., Motihari, vide order dated 4.9.2013 passed in Dhaka P.S.Case No.148 of 2012, ordered for issuance of processes against the petitioner under Section 498A and other Sections of the Indian Penal Code.

The petitioners have challenged the aforesaid order taking cognizance against the petitioners. It is further submitted on behalf of the petitioners that the whole prosecution case is false and malicious being instituted against the petitioners as the petitioner no.3 is father of the petitioner no.1 and father-in-law of the informant and is a disable person and unable to move around on his own and has 60 % disability on account of her Hansen’s disease and further he was in continuous treatment since 2009 and so far the petitioner no.2 is concerned, he has participated in the marriage on 4.3.2009 and story of assault to the informant is a cooked up story rather the petitioner no.3 was also at Delhi where he had got himself medically checked up at Base Hospital, Delhi Cantt. for his ailment, as such the allegation against the petitioner no.3 is cooked up story and same had been attributed to harass and humiliate the whole family members.

Further, it is submitted that even the allegation against the petitioner no.1 is equally false as he did not get opportunity to participate in the marriage of his brother on 4.3.2009 as he was under training at 405 Air Force Station, Belgaum, Karnataka between 28.1.2009 to 30.3.2009 and a certificate to that effect was issued to the petitioner no.1 by the adjutant Air Force Station, New Delhi where he had gone for training and where he is posted and even at the time of '*Bidai*' ceremony, he could not make it as he was obliged to be present at Delhi and took his father to Base Hospital, Delhi camp and further the petitioner no.1 had also reported seek at the Medical Unit of the HQWAC (U) for his treatment on 19.11.2009, subsequently on 23.11.2009 reported for review. In support of the aforesaid contention, the learned counsel for the petitioners has drawn my attention towards Annexures 2 to 5 and submitted that these documents have been issued by the Air Force authority and which can not be thrown out.

On the basis of the aforesaid submission, it is submitted that the allegation against the petitioners are purely *mala fide* and maliciously being used against them to harass whole family members. Apart from that it has also been submitted that even the petitioner no.1 has been transferred from his unit HQWQC (U) to 412 Air Force Station, Delhi Cantt. and on the alleged date dated 19.12.2009, the petitioner no.1 was at Delhi and where in the process of moving out from HQWAC (U) to 412 Air Force Station, he claimed travelling allowance, which will appear from Annexure-6 and that shows that at the relevant time, he was travelling along with wife (petitioner no.2), his father and 14 yeas old son. The aforesaid documents were originated from unimpeachable source as such the same can not be doubted and those documents show that the petitioners have been falsely implicated in this case only with a view to involve the whole family members in the present case and the aforesaid fact clearly shows that the allegation against the petitioner no.1 in the complaint petition is that at the time of marriage he and his father created obstacles and demanded Alto Car and similarly at the time of 'Bidai', are ornamental in nature, which were only for framing the petitioners in this case. Similarly allegation against the petitioner no.2 is that she always tried to proof the complainant wrong in the domestic works for getting her torture is concerned, that also appears to be ornamental. So far other allegations are concerned, there are no specific rather omnibus in nature.

Apart from the above, the Hon'ble Supreme Court in a similar decision reported in (2009) 10 SCC 184 has also held that for lodging a proper complaint mere mentioning of relevant Sections and languages of those Sections are not sufficient rather particulars of the offences committed by each accused and role played by them in committing for offence need to be stated.

It is further submitted that now-a-days it has become tendency especially in the matrimonial cases in between the wife and husband to implicate all his family members including the unmarried sister, elder brother of the husband and other accused persons so as to make them liable for bickering between the wife and her husband. The aforesaid trend is not good. Even according to complaint petition, the petitioner no.1 is living separately and he is in job and the petitioner no.2 is wife of the petitioner no.1. A large number of documents has been filed by the petitioner no.1 showing that he was not present on the day of marriage as well as on the day of '*Bidai'* and all these documents are official letters issued by the Air Force Headquarter, which are unimpeachable documents and the Hon'ble Supreme Court in its decision reported in (2008) 3 SCC 678 has already held that documents of unimpeachable character can be taken into consideration at the time of quashing the FIR. Hence from the aforesaid facts, it clearly appears that the order taking cognizance against the petitioner nos.1 and 2 is bad in law and continuous of the proceeding against them will be abuse of the process of the Court.

In spite of service of notice being validly served upon the Opposite Party No.2, nobody appears on before the Opposite Party no.2.

Heard learned A.P.P. also, who has opposed the application on the ground that it has arisen out of the police case and the police after investigation found the materials against the petitioners; on the basis of which the leaned S.D.J.M, Motihari has taken cognizance against the petitioners; as such there is nothing illegal in the impugned order. It has further been submitted that the evidences , which have come during enquiry, their veracity can not be taken at this stage nor they can be thrown on the ground of mala fide proceeding.

Having heard both sides and from perusal of the record including the FIR and the impugned order, it appears that petitioner no.1 is brother-in-law (*Bhaisur*) and the petitioner no.2 is '*Gotani*'.

After scrutiny, it appears that though there are allegations against the petitioner no. 1 that at the time of marriage, he created obstacles in connection with demand of a Alto Car and even at the time of '*Bidai'* he demanded Alto Car and there are similarly allegation against the petitioner no.2 also that he used to make complaint about the complainant in order to keep her in bad test in the family members, however, considering the aforesaid evidence, in the light of the documents filed by the petitioner no.1, which are documents issued by the Air Force Headquarters, which clearly shows that at the time of marriage the petitioner no.1 was on leave and at the time of Bidai he was attending his father and he was on medical leave and the aforesaid documents have been issued by the Air Force Headquarter office, which are documents of unimpeachable character and its veracity can not be doubted. Similarly so far the petitioner no.2 is concerned, the documents show that at that time, she was with her husband, who is petitioner no.1 and he was transferred as such they were on transit leave in connection with transfer and that also appears from the travelling bill.

The learned counsel for the petitioners has cited order of the Hon'ble Supreme Court reported in Para Para 22 of (2008) 3 SCC 678 as follows :

> *"Ordinarily, a defence of an accused although appears to be plausible should not be taken into consideration for exercise of jurisdiction under Section 482. The High Court at that stage would not ordinarily enter into a disputed question of fact. It, however, does not mean that documents of unimpeachable character should not be taken into consideration at any cost for the purpose of finding out as to whether continuance of the criminal proceedings would amount to an abuse of the process of court or that the complaint petition is filed for causing mere harassment to the accused. Although a large number of disputes should ordinarily be determined only by the civil courts, but criminal cases are filed only for achieving the ultimate goal, namely, to force the accused to pay the amount due to the complainant immediately. The courts on the one hand should not encourage such a practice; but, on the other, can not also travel beyond its jurisdiction to interfere with the proceeding which is otherwise genuine. The courts cannot also lose sight of the fact that in certain matters, both civil proceedings and criminal proceedings would be maintainable.*

Generally the aforesaid documents can not be looked into at the stage of quashing as these documents are not available on the record. However, as held by the Hon'ble Supreme Court in reported in (2008) 13 SCC 678, that the documents to the unimpeachable character can not be taken into consideration while considering the application under Section 482 of the Indian

Penal Code and in the present case, I have stated above that those are unimpeachable characters and the veracity can not be doubted; apart from that no doubt there are specific allegations against the petitioners but in the back ground, where there are a large number of documents and also considering this aspect of the matter that it has become tendency in the matrimonial cases to implicate the whole family in a case, just to harass them so that no family members can make '*pairvi*' on behalf of the petitioner-accused persons as well as especially there is tendency to implicate those members who are earning and the petitioner no.1 is the earning employee and in that circumstances, there is possibility of making involve the whole family members in this case merely with a mala fide intention to settle the scores and harass the accused persons. In such a situation over-looking the aforesaid materials available on the record and allowing the proceedings to continue will only be abuse the process of the court especially when it is a mala fide proceeding initiated against all the family members .

The Hon'ble Supreme Court in a decision reported in Paras 14,15, 18 to 20 and 24 to 28 of (2012) 10 SCC 741 has come to a conclusion that :

"Though the contents of the complaint made out a prima facie case against the husband of Respondent 2 wife and some other family members, but no such case was made out against the appellant-accused. There were no specific allegations against the appellant-accused (sister and brother of the husband) so as to make them liable for bickering between Respondent 2 wife and her husband. There was no specific allegation against the appellant-accused that they demanded any dowry from Respondent 2. Casual reference to a large number of members of the husband's family without any allegation of active involvement would not justify taking cognizance against them and subjecting them to trial. Respondent 2 wife had obtained an ex parte divorce decree against her husband. This was also a relevant fact. Under these conditions, the High Court erred in not considering the entire circumstances of the case with regard to the appellant-accused. It disposed of the matter only on the issue of territorial jurisdiction without even looking at the other issues raised. Though it was justified in not deciding the issue of territorial jurisdiction under Section 482 Cr.P.C. but it failed to apply its mind to the case and determine whether the appellant-accused be subjected to trial. The High Court ought to have considered that even if the trial court had the jurisdiction to hold the trial, the question still remained as to whether the trial against the appellant brother and sister of the husband was fit to be continued and whether that would amount to abuse of process of court. As the contents of the FIR indicated that the appellant-accused were casually referred to and no prima facie case was made out against them, in the absence of specific allegations, criminal proceedings against them are quashed without remanding the matter to High Court for reconsideration."

In view of the discussions made above, the impugned order dated 4.9.2013 taking cognizance against the petitioner nos.1 and 2 is quashed.

So far application for quashing with regard to petitioner no.3 is concerned, as he has already died, the application has become infractrucous against him.

Accordingly, this application is partly allowed.

(Vinod Kumar Sinha, J)

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