

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.4208 of 2012

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1. Md. Sarfaraz Khan @ Sanni S/O Md. Sameem Khan, Resident of Village- Bhikanpur, P.S.- Ishakchak, District- Bhagalpur
 2. Md. Sameem Khan S/O Late Md. Siddique Khan, Resident of Village- Bhikanpur, P.S.- Ishakchak, District- Bhagalpur
 3. Bibi Aliya Tabassum @ Bachchi W/O Md. Sameem Khan, Resident of Village- Bhikanpur, P.S.- Ishakchak, District- Bhagalpur

.... Petitioners

Versus

1. The State of Bihar
2. Bibi Fatma D/O Md. Mokhtar Resident of Village- Kharhara, P.S.- Barahat, District- Banka

.... Opposite Parties

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Appearance :

For the Petitioners	:	Ms. Pravina Kumari, Advocate
For the Opposite Party No.2	:	Mr. R.K.Prasad, Advocate
For the State	:	Mr. Humayu Ahmad Khan, APP

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CORAM: HONOURABLE MR. JUSTICE SANJAY KUMAR

ORAL JUDGMENT

Date: 02-08-2017

Learned counsel for the petitioners is permitted to make necessary correction in the petition in course of the day.

2. This application under section 482 of the Cr.P.C. has been filed to quash the order dated 25.11.2011 passed by learned SDJM, Banka in Complaint Case No.1619 of 2011 whereunder the learned SDJM finding prima-facie case for the offence under Section 498A of the IPC and Section 4 of the Dowry Prohibition Act summoned the petitioners.

3. Heard and perused the record.

4. The petitioners are the husband and parents-in-laws of the complainant Opposite Party No.2. It has been alleged that the



Opposite Party No.2 was married with petitioner no.1 on 19.09.2010 and at the time of marriage, the parents of Opposite Party No.2 had given cash amount and articles worth Rs.5,00000/-. After marriage her parents-in-law who are petitioners no.1 and 2 started demanding Rs.1,00000/- and one bigaha land as further dowry. The demand was not fulfilled and she was ousted from the matrimonial house. She has alleged that the accused persons abused and assaulted on several occasions.

5. It has been submitted that the allegation of demand and torture is omnibus. The Opposite Party No.2 is not willing to live with the petitioners. The Opposite Party No.2 filed a Maintenance Case before the Principal Judge, Family Court, Bhagalpur for her maintenance. The petitioner no.1 is presently paying Rs.5,000/- per month as per order of Principal Judge, Family Court, Bhagalpur. The petitioner no.1 had filed an application before Bihar Rajya Mahila Aayog vide case no.1249 of 2011 where the statement of Opposite Party No.2 was recorded on 19.04.2012. In her statement she did not complain against the petitioners. The learned Magistrate without applying judicial mind has taken cognizance against the petitioners and so the impugned order is fit to be quashed.

6. The learned APP for the State as well as Opposite Party No.2 opposed the submissions.

7. On perusal of complaint petition and its annexures, it



appears that petitioner no.1 is the husband of the complainant and petitioner nos.2 and 3 are the parents-in-law. From Annexure-A of the supplementary affidavit filed on behalf of the petitioners, it appears that she had not stated any specific overt-act against petitioners no.2 and 3. Petitioner no.1 is regularly paying an amount of Rs.5,000/- per month to the complainant. The petitioner no.1 has filed an application for Restitution of Conjugal Rights vide Matrimonial Case No.138 of 2011. From the materials available on record, I find that the learned Magistrate has taken cognizance against petitioners no.2 and 3 on the basis of vague and omnibus allegation.

8. In view of above discussions, I find that the criminal prosecution of petitioner nos.2 and 3 would amount to abuse of the process of the Court. The cognizance order dated 25.11.2011 with respect to petitioners no.2 and 3 who are parents-in-law is quashed. So far petitioner no.1 is concerned, I find that the court below has rightly taken cognizance for the offence under Section 498A of the IPC against him.

9. This criminal miscellaneous application is disposed of in the above manner.

(Sanjay Kumar, J)

B.Kr./-

AFR/NAFR	NAFR
CAV DATE	
Uploading Date	13.08.2017
Transmission Date	13.08.2017

