

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.52180 of 2013

Arising Out of PS.Case No. -19 Year- 2012 Thana -MAHILA P.S. District- SITAMARHI

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1. Markendeya Mishra @ Markendye Mishra Son Of Gapala Jha Resident Of Village- Panchhaur, P.S.- Riga, District- Sitamarhi
2. Ashman Devi @ Sundari Devi @ Asman Devi @ Sundri Devi W/O Markandeya Mishra @ Markendye Mishra Resident Of Village- Panchhaur, P.S.- Riga, District- Sitamarhi

.... Petitioner/s

Versus

1. The State Of Bihar
2. Anita Devi W/O Santosh Kumar Resident Of Village- Panchhaur, P.S.- Riga, District- Sitamarhi At Present Residing At H/O- Ganesh Singh At Shanti Nagar, Near I.T.I. Chowk, P.S. Dumr, District- Sitamarhi

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Devendra Kumar
For the Opposite Party : Mr. Alok Jha
For the Opposite Party/s : Mr. Tapeswar Sharma (App)

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CORAM: HONOURABLE MR. JUSTICE VINOD KUMAR SINHA
ORAL ORDER

6 18-01-2017 The petitioners have preferred this application under Section 482 of the Code of Criminal Procedure for quashing order dated 30.05.2013 passed by the Chief Judicial Magistrate, Sitamarhi in Trial No.3542 of 2013 arising out of Sitamarhi (Mahila) P.S.Case no.19 of 2012, whereby and whereunder the cognizance has been taken against the petitioners and other accused persons under Sections 323, 494, 498(A) of the Indian Penal Code and Section 34 of the Dowry Prohibition Act.

The prosecution story in short is that the Opposite Party No.2 had filed written statement before the police stating therein



inter alia that she was married to the son of petitioners in the year, 2006 and thereafter, she gave birth to a child in the year, 2008. Her husband is in service on the post of R.O. in 153 Batallion at Motihari but after marriage, her husband was subjecting her to cruelty and torture, for which a case is going on in the court and in the meanwhile, her husband married with second girl, namely, Arti Kumari on 29.2.2012, and he is torturing her in collusion with other co-accused persons.

On the basis of aforesaid written report, Sitamarhi (Mahila) P.S.Case no.19 of 2012 has been instituted and police, after investigation, submitted charge-sheet against the petitioners and other accused persons and thereafter, cognizance of the offences has been taken against the petitioners and other accused persons. The aforesaid order taking cognizance is under challenge in the present application.

It is submitted on behalf of the petitioners that petitioner no.1 is father-in-law and the petitioner no.2 is mother-in-law. It has also been submitted that so far petitioner no.1 is concerned, he has already died during the pendency of this application, as such prayer made on behalf of petitioner no.1 is concerned, it has already become infructuous and so far petitioner no.2 is concerned, she is a 'cancer' patient and even from perusal of the



F.I.R., it appears that she is living separately from her son and further from perusal of the F.I.R., it will appear that there is nothing against these petitioners and only in the last paragraph of the complaint petition, it has been shown that these petitioners also conspired. It is also submitted that apart from that there is no allegation in the F.I.R. against these petitioners, however, the learned court below without appreciating the aforesaid fact, in a very mechanical manner, has taken cognizance against the petitioners, as such the order taking cognizance is not sustainable in the eye of law.

Heard learned A.P.P. as well as learned counsel for the Opposite Party No.2.

The learned counsel for Opposite Party No.2 could not point out any specific allegation, attributed against these petitioners except that their names are mentioned in the last column of the F.I.R.

Having heard parties and submission as advanced by both the parties. On perusal of the record, it clearly appears that so far petitioners are concerned, they are father-in-law and mother-in-law of the informant but not an *iota* of allegation is against these petitioners and only their names are mentioned in the last portion of the FIR, showing that they have also conspired. It further



appears from perusal of the F.I.R. that they are living separately.

Considering the aforesaid facts of the matter and also considering that in a large number of decisions, it has been held by the Hon'ble Apex Court that now-a-days, it has become tendency especially in matrimonial disputes to involve whole family members of the husband of complainant, as such, the Magistrate, taking cognizance has to examine as to what are the specific materials against each accused persons, has not to pass order in a mechanical manner.

In view of the discussions made above facts, I think that order dated 30.05.2013 taking cognizance against these petitioners is not sustainable in the eye of law, however, as the petitioner no.1 has already died, as such the application against petitioner no.1 has become infructuous.

So far allegation against petitioner no.2 is concerned, she is mother-in-law, so impugned order dated 30.05.2013 passed in Trial No.3542 of 2013 arising out of Sitamarhi (Mahila) P.S.Case No.19 of 2012 to the extent of only petitioner no.2, is quashed.

Accordingly, this application is allowed.

(Vinod Kumar Sinha.)

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