

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.36312 of 2014

Arising Out of PS.Case No. -178 Year- 2013 Thana -PRANPUR District- KATIHAR

- =====
1. Md. Izharul Son of Md. Riyajuddin Ansari @ Md. Riyajuddin
 2. Md. Riyajuddin Ansari @ Md. Riyajuddin son of Late Safar Ali Ansari

Both are resident of Village : Baina , Police Station : Pranpur ,
District - Katihar

.... Petitioners

Versus

1. The State of Bihar
2. Jahanoor Khatoon wife of Md. Ushman Ansari resident of
Village : Baina , Police Station : Pranpur , District - Katihar

.... Opposite Parties

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Appearance :

For the Petitioner/s : Mr. Bimal Kumar, Advocate

For the Opposite Party/s : Mr. Md. Fahimuddin, APP

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL JUDGMENT

Date: 01-11-2017

Heard learned counsel for the petitioners and
learned Additional Public Prosecutor for the State. No one
appears on behalf of the informant-Opposite Party No. 2.

2. The petitioners, in the present case, are seeking
quashing of the order dated 17.12.2013, passed by learned
Chief Judicial Magistrate, Katihar in Pranpur P.S. Case No.
178/2013 by which the learned Chief Judicial Magistrate,
Katihar, has taken cognizance of the offences under Section
498A/34 of the Indian Penal Code and Section 3/4 of the
Dowry Prohibition Act, and decided to issue summon against
the three accused persons including the present petitioners.



3. In this case, petitioner no. 1 is said to be the father-in-law and petitioner no. 2 is the elder brother of husband of the informant-Opposite Party No. 2. Husband of Opposite Party No. 2 had also moved this court for quashing of the order taking cognizance vide Cr. Misc. No. 38624/2014, but the same was withdrawn.

4. Learned counsel for the petitioners submits that in the present case these two petitioners are being prosecuted only because they happened to be the father-in-law and elder brother of the husband Md. Usman Ansari with whom the informant is claiming her fourth marriage. Learned counsel submits that in the written report submitted to the Officer-in-Charge of the police station giving rise to the present case. The informant claimed that her marriage was solemnized with Md. Usman Ansari according to Muslim rights and customs on 29.07.2013. She has further alleged that immediately after her *Nikah* her husband, *Bhaisur* and father-in-law started putting pressure upon her to bring a dowry of Rs. 1 Lac and a motorcycle. It is alleged that when she told the accused that her father being a poor person cannot arrange this much amount, the accused persons started torturing the informant and despite attempts made to



reconcile the issues she was thrown out of the house on 20.08.2013 by the accused persons and since then she was residing in her *Maike*.

5. Learned counsel for the petitioners submits that a bare perusal of the written report dated 03.10.2013 would show that there is a vague, general and omnibus allegations against these petitioners as no specific act of any torture has been alleged. Learned counsel submits that in fact the present case has been lodged with a *mala fide* intention to harass the entire family of Md. Usman Ansari and the entire prosecution story is nothing but a bundle of lie. Learned counsel submits on the strength of Annexure-2 which is miscellaneous petition no. 190/2013 filed in the court of learned Chief Judicial Magistrate, Katihar on 26.07.2013 by Md. Usman Ansari against the Opposite Party No. 2 and her family members that in this petition he had brought to the notice of the learned Chief Judicial Magistrate, Katihar that Opposite Party No. 2 had formerly married with Budun Ansari, son of late Mobhad Ansari, a resident of village – Ratwa, P.S. – Ratwa, District – Maldah (W/B) and then she solemnized 2nd marriage with Md. Arif and again she married with one Abdul Mannan, son of Md. Safil Ansari, resident of village –



Baina, P.S. – Pranpur, District – Katihar. She had a fourth marriage with one Jahbaz in the village itself which is evident from list of BPL person issued under the signature of Block Development Officer and Sub-Divisional Officer. The Opposite Party No. 2 is also getting Laxmi Bai Social Safety Pension from the State Government being a widow. Learned counsel has placed Annexures-3 & 4 of the present petition as well showing from the extract of the BPL list and the pension paper that the Opposite Party No. 2 was married to Late Jahbaz. In the miscellaneous petition filed before the learned Chief Judicial Magistrate, Katihar, Md. Usman Ansari informed the court that the Opposite Party No. 2 is putting pressure upon him to marry her otherwise he would be involved in a rape case.

6. Learned counsel for the petitioners submits that father and other family members of Opposite Party No. 2 kidnapped the son of the petitioner no. 2 and forcibly prepared a *Nikahnama* for which he filed a complaint case in the court of learned Chief Judicial Magistrate, Katihar on 01.08.2013 vide Annexure-5, and thereafter again the Opposite Party No. 2 lodged a case giving rise to Pranpur P.S. Case no. 14/2014 against the accused persons.



7. In the present case, case diary was also called for and the same has been received. Learned Additional Public Prosecutor for the State submits that the allegations against these petitioners have been found true, therefore, a charge-sheet was filed against them as well and the learned Chief Judicial Magistrate, Katihar has rightly taken cognizance, but on perusal of the case diary, he pointed out that witnesses examined by the police are all family members of the Opposite Party No. 2. There is no independent witness in support of the alleged marriage and demand of dowry or act of torture.

8. Learned counsel for the petitioners at this stage also submits that even in course of investigation no material has come to support the allegation of demand of dowry and/or the alleged torture. He submits that in the nature of allegation where the informant herself says that the alleged marriage took place on 29.07.2013 and the miscellaneous petition filed by Md. Usman Ansari and the complaint case (Annexure-5) are dated 01.08.2013, it cannot be believed that the allegations of demand of dowry or torture are *prima facie* made out.

9. Learned counsel further submits that even in the



case diary it has come that the Opposite Party No. 2 had earlier married thrice and all the marriages have broken down. He, therefore, submits that in absence of any materials against these two petitioners, there prosecution is an abuse of the process of court and in the totality of the circumstances, the order taking cognizance and issuance of summon, in so far as it relates to these two petitioners, is fit to be quashed.

10. I have perused the materials available on the record and have heard learned counsel for the petitioners as well as learned Additional Public Prosecutor for the State. From the uncontroverted and unimpeachable documents on the record, it is evident that Opposite Party No. 2 had at least three earlier marriages and she has been availing the pensionary benefit as a widow. It is further evident that on 01.08.2013, Md. Usman Ansari had submitted a miscellaneous petition in the court of learned Chief Judicial Magistrate, Katihar in which he had narrated the story of his kidnapping on the strength of arms and ammunitions by the father and family members of the Opposite Party No. 2. In the said miscellaneous petition he had also narrated that how he was made to sign on a *Nikahnama*. Without going into the merit of the allegations and counter allegations, one thing is



very clear from the materials available on the record, which are uncontroverted materials, that even if the alleged marriage had taken place on 29.07.2013, the same is not admitted, which is evident from the fact that on 01.08.2013 itself, son of petitioner no. 1 had submitted his application before the learned Chief Judicial Magistrate, Katihar, and a complaint case was also filed with respect to his kidnapping, neither in the written report nor in the case diary any material has come to support the allegation of demand of dowry and/or the alleged torture. The materials on the record are clearly showing the circumstances whereunder the family members like the petitioners are facing this prosecution without there being any specific allegation or material against them.

11. In the opinion of this court, in the totality of the circumstances and the materials available on the record, it is a case of *mala fide* prosecution of the petitioners by Opposite Party No. 2. The order taking cognizance in so far as it relates to the present petitioners is hereby quashed.

12. It is made clear that any discussion or observation with respect to the allegations and counter allegations between the parties have been made only for the purposes of



this case and the same shall not be used by the parties against each other in any other proceeding.

13. This application is, accordingly, allowed in respect of the present petitioners.

(Rajeev Ranjan Prasad, J.)

Rajeev/-

AFR/NAFR	NAFR
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