

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.49683 of 2014

Arising Out of PS.Case No. -28 Year- 2013 Thana -JALE District- DARBHANGA

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1. Tribhuwan Thakur Son Jageshwar Thakur

2. Kusum Devi w/o Tribhuwan Thakur

Both resident of Village Hasanpur, P.S. Jale, District-Darbhang.

.... Petitioner/s

Versus

1. State of Bihar

2. Durgi Devi, d/o Kusum Thakur, resident of Village Simri P.S. - Bisfi, District-Madhubani

.... Opposite Party/s

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Appearance:

For the Petitioner/s : Mr. Md. Soban Asghar, Advocate.

For the State: Mr. Parmeshwar Mehta, A.P.P.

For the Opposite Party no.2 : Mr. Dharmendra Jha, Advocate

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD

ORAL JUDGMENT

Date: 16-10-2017

Heard learned counsel for the petitioners and learned counsel representing the opposite party no. 2 as also learned A.P.P. for the State.

2. Petitioner no. 1 is the elder brother of the husband of the informant – opposite party no. 2 and petitioner no. 2 is the wife of the petitioner no. 1. Both these petitioners are seeking quashing of the order dated 26.08.2013 passed by learned Chief Judicial Magistrate, Darbhanga in connection with Jale P.S. Case No. 28/2013 registered on 03.04.2013 by which the learned Chief Judicial Magistrate, Darbhanga has taken cognizance of the offences under Sections 498A



and 348 IPC read with Sections 3 / 4 of the D.P. Act and decided to issue summons to all the eight accused persons including the present petitioners.

3. Learned counsel for the petitioners submits that on the same allegations the informant had earlier lodged a complaint case giving rise to C.R. No. 230/2013 in the court of the learned Chief Judicial Magistrate, Madhubani against six accused named in the Complaint Petition. These two petitioners were not named in the complaint case. Learned counsel for the petitioners submits that a perusal of the Complaint Petition (Annexure-3 to the present application) would show that it contains the allegation of demand of dowry as well as torture meted out to her by the accused persons and there is also an instance of commission of certain acts by the accused named in the complaint on 04.03.2013. Learned counsel has drawn my attention towards the Complaint Petition and then has placed Annexure-1, which is the written report dated 03.04.2013 submitted by the informant – opposite party no. 2, who is the complainant in C.R. No. 230/2013. In the written report submitted to the Officer-in-charge, Jale Police Station, this time the name of these two petitioners have also been added as accused without there being any specific allegation against them. In fact, a comparison between the two documents, i.e., the Complaint Petition and the F.I.R. would show that



the same allegations and instance have been repeated for purpose of lodging an F.I.R. Learned counsel submits that the petitioner no. 1 is Bhaisur and the petitioner no. 2 is Gotni and they are always residing in Kolkatta as the petitioner no. 1 is an employee in the Railway. The petitioners have brought on record copies of the Identity Card and the Attendance Register showing that on the alleged date the petitioner no. 1 was on duty. The emphasis is on the submission that it is a case of *mala fide* prosecution of the entire family members. The Complaint Petition and the F.I.R. for the same allegations without there being any specific allegation against these petitioners are conclusively indicating towards false prosecution of these petitioners.

4. On the other hand, learned counsel for the opposite party no. 2 has opposed the prayer for setting aside of the impugned order as regards the present petitioners.

5. A pointed question has been asked to the learned counsel representing the opposite party no. 2 as to whether there is any specific allegation against these petitioners, learned counsel for the opposite party no. 2 is unable to show that there is any specific allegation against these two petitioners. There is also no explanation as to why the names of these petitioners were added in the F.I.R. lodged on 03.04.2013 when in the Complaint Petition they were not accused and no allegations of demand of dowry or torture were made



against them.

6. This Court has perused the materials available on record. The Complaint Petition (Annexure-3 to the present petition) was filed only against six accused, these petitioners were not named there. No allegation at all was made against these petitioners in the Complaint Petition filed on 07.03.2013.

7. The F.I.R. has been lodged on 03.04.2013 but without there being any specific allegation against these petitioners. The only difference is that the names of these petitioners have been added in the F.I.R. in the column of the accused with an intention to make them accused on the strength of general and omnibus allegations which were earlier made against the accused persons named in the Complaint Petition only.

8. There is another uncontroverted and unimpeachable document in form of the Identity Card of the petitioner no. 1 showing that he is working as a Driver, Grade I in South Eastern Railways, the Attendance Register enclosed as part of Annexure-2 also shows that he was on duty during the period these Complaint and the F.I.R. have been lodged. As the Court comes to a finding that these petitioners have been only implicated because they happen to be the family members of the husband and there is no allegation at all against them, rather their names have been brought in the F.I.R. at a later stage



when the complainant – opposite party no. 2 did not make any allegation against them in the first complaint, it is a clear case of *mala fide* prosecution of these petitioners.

9. This being the position, continuance of the criminal proceedings against these petitioners would be only an abuse of the process of court and the same needs to be set aside in the interest of justice.

10. The impugned order insofar as it relates to the present petitioners is hereby set aside and the application is allowed.

(Rajeev Ranjan Prasad, J)

Dilip, AR

AFR/NAFR	NAFR
CAV DATE	N/A
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