

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.46485 of 2013

Arising Out of PS.Case No. -null Year- null Thana -null District- BHABHUA (KAIMUR)

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1. Punam @ Punam Kumari, D/O Late Krishna Nand Tiwary, Wife of Rahul Mishra, Resident of Village-Bhaithauli, Police Station-Cholapur, District-Varanasi (U.P.)

2. Lalli @ Lalli Devi @ Bandana , D/O Late Krishna Nand Tiwary, Wife of Ajay Tiwary, Resident of Village-Jhajhupur, Police Station-Chubeypur, District-Varanasi (U.P.)

.... Petitioner/s

Versus

1. The State Of Bihar

2. Paras Nath Tiwary, Son of Ram Janam Tiwary, Resident of Village-Silari, Police Station-Bhabhua, District-Kaimur

.... Opposite Party/s

with

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Criminal Miscellaneous No. 17042 of 2014

Arising Out of PS.Case No. -298 Year- 2006 Thana -BHABHUA District- BHABHUA (KAIMUR)

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Upendra Tiwary @ Pandit, S/o Late Krishna Nand Tiwary, Resident of Village Raunna, Police Station Mungal Sarai, District Chandauli (U.P.).

.... Petitioner/s

Versus

1. The State of Bihar.

2. Paras Nath Tiwary, S/o Late Ram Janam Tiwary, Resident of Village Silari, Police Station Bhabhua, District Kaimur.

.... Opposite Party/s

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Appearance :

(In Cr.Misc. Nos .46485 of 2013 and 17042 of 2014)

For the Petitioner/s : Mr. Shailendra Kumar Singh, Advocate.

For the State : Mr. Dashrath Mehta, APP

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CORAM: HONOURABLE MR. JUSTICE RAJENDRA KUMAR MISHRA

ORAL JUDGMENT

Date: 15-05-2017

Heard learned counsel for the petitioners and the
learned counsel for the State.

2. Both the applications have been filed for quashing



the order dated 27.08.2013 passed in Bhabhua P.S. Case No. 298 of 2016/ G.R. No. 1101 of 2006, whereby the Chief Judicial Magistrate, Kaimur at Bhabhua, took cognizance of the offence under Sections 304(B) and 201/34 of the Indian Penal Code and Sections 3/4 of the Dowry Prohibition Act against five accused named in the F.I.R. including the petitioners, hence both applications are heard together and are being disposed of by common order.

3. The facts leading to these applications are that complainant-opposite party no. 2, Paras Nath Tiwary, talked to perform the marriage of his daughter, Pratima @ Gudia Devi, with accused no. 1, Upendra Tiwary @ Pandit (petitioner of Criminal Misc. No. 17042 of 2014) and Komal Tiwary (accused no. 4) and Prkalu @ Pankaj Tiwary (accused not 5) demanded cash of Rs.25,000/- as expenditure of 'Barat'. At that time, Upendra Tiwary @ Pandit also asked for motorcycle. Thereafter, accused No. 2, Punam @ Punam Kumari and accused no. 3 Lalli @ Lalli Devi @ Bandana (petitioners of Criminal Misc. No. 46485 of 2013) along with Komal Tiwary and Prkalu @ Pankaj Tiwary had come to see his daughter, Paima @ Gudia Devi. At that time, complainant-opposite party no. 2 gave cash of Rs.25,000/- as 'Barat' expenditure to Komal Tiwary. Accordingly, marriage of his



daughter was performed in the month of May, 2001 with accused no. 1, Upendra Tiwary @ Pandit. At the time of 'Bidai' of his daughter, accused nos. 1, 4 and 5, Upendra Tiwary @ Pandit, Komal Tiwary and Prkalu @ Pankaj Tiwary made demand of motorcycle but complainant-opposite party no. 1 showed his inability to fulfill the demand and anyhow his daughter was sent in Bidai at her Sasural. After some days, complainant-opposite party no. 2 went at the 'Sasural' of his daughter and met with his daughter. At that time accused no. 1, Upendra Tiwary @ Pandit and accused no. 4, Komal Tiwary were not present. After one year, his daughter came at his house then narrated about her torturing due to non-fulfillment of demand of motorcycle. On 20.08.2006, Accused no. 1, Upendra Tiwary @ Pandit, along with other persons came at the house of complainant-opposite party no. 2 and talked his wife to take his daughter, Pratima @ Gudia for checkup of her pregnant and both carried her on pretext of checkup. On next day, Upendra Tiwary, son of complainant opposite party no. 2 went at the sasural house of Pratima @ Gudia but she was not there. When Upendra Tiwary asked to accused no. 1, Upendra Tiwary @ Pandit about his sister then he asked to give him motorcycle, if he wants to see his sister. On 27.08.2006, the complainant-opposite party no. 2 received information about killing of his daughter, Pratima @



Gudia Devi by her husband and in-laws and to disposed of her dead body.

4. The Complaint Case No. 794 of 2006 filed by opposite party no. 2 in the court of Chief Judicial Magistrate, Kaimur, Bhabhua, was sent under Section 156(3) Cr.P.C. to police station Bhabhua for investigation. Accordingly, Bhabhua P.S. Case No. 298 of 2006 was instituted on 08.10.2006, under Sections 304(B), 498(A) and 201/34 of the Indian Penal Code and Section 3/4 of the Dowry Prohibition Act against the five accused named in the complaint petition including the petitioners. On investigation, the police submitted charge sheet against all five accused for the offence under Sections 304(B), 498(A) and 201/34 of the Indian Penal Code and Section 3/4 of the Dowry Prohibition Act. Thereafter, the learned Chief Judicial Magistrate, Bhabhua, Kaimur took cognizance of the offence under Sections 304(B) and 201/34 of the Indian Penal Code and Sections 3/4 of the Dowry Prohibition Act, through the impugned order dated 27.08.2013.

5. Learned counsel for the petitioners submits that while Punam @ Punam Kumari and Lalli @ Lalli Devi @ Bandana (petitioners of Criminal Misc. No. 46485 of 2013) are shown as accused in the complaint petition of complainant/opposite party no.2, which is the basis of the F.I.R. of Bhabhua P.S. Case No. 298



of 2006 along with Upendra Tiwary @ Pandit (petitioner of Criminal Misc. No. 17042 of 2014) and two others but nothing has been stated against Punam @ Punam Kumari and Lalli @ Lalli Devi @ Bandana (petitioners of Criminal Misc. No. 46485 of 2013). In course of investigation, the Investigating Officer has recorded the statement of Paras Nath Tiwary (complainant-opposite party no. 2), his wife Shiv Kumari Devi, son Upendra Tiwary and brother-in-law Bhagwat Divedi, as detailed in paragraph 5, 6, 7 and 8 of the case diary, while they have stated that accused have tortured the deceased, Pratima @ Gudia but they have not disclosed the name of Punam @ Punam Kumari and Lalli @ Lalli Devi @ Bandana, who are married sister-in-law (Nanad) of the deceased. It is further submitted that witness Bala Tiwary, Durga Tiwary, Nagesh Tiwry, have stated in their statement as detailed in paragraphs 30, 31 and 32 of the case diary that Punam @ Punam Kumari and Lalli @ Lalli Devi @ Bandana had come at her 'Maika' after hearing the death of deceased, Pratima @ Gudia Devi from their 'Sasural'. As such, petitioners, Punam @ Punam Kumari and Lalli @ Lalli Devi @ Bandana have falsely been implicated in this case without overt act with ulterior motive and the learned Chief Judicial Magistrate, Kaimur, Bhabhua also illegally took cognizance of the offence under Sections 304(B) and 201/34 of the



Indian Penal Code and 3/4 of the Dowry Prohibition Act through the impugned order dated 27.08.2013 against Punam @ Punam Kumari and Lalli @ Lalli Devi @ Bandana (petitioners of Criminal Misc. No. 46485 of 2013). Learned counsel for the petitioners fairly submits that there is specific allegation against Upendra Tiwary @ Pandit (petitioner of Criminal Misc. No. 17042 of 2014), husband of the deceased, about demand of motorcycle and torturing for the same to his wife, deceased, Pratima @ Gudia Devi.

6. Learned A.P.P. appearing for the State submits that while Punam @ Punam Kumari and Lalli @ Lalli Devi @ Bandana (petitioners of Criminal Misc. No. 46485 of 2013) are named in the complaint petition, which is the basis of the F.I.R. along with Upendra Tiwary, husband of the deceased and others but no specific overt act has been attributed against Punam @ Punam Kumari and Lalli @ Lalli Devi @ Bandana (petitioners of Criminal Misc. No. 46485 of 2013), who are married sister-in-law of the deceased. He fairly conceded that the witnesses in paragraphs 30, 31 and 32 of the case diary have stated that both petitioners Punam @ Punam Kumari and Lalli @ Lalli Devi @ Bandana had come at their 'Maika' after the death of the deceased to attend the Saradh ceremony.

7. On perusal of the complaint petition and the case



diary, it appears that while Punam @ Punam Kumari and Lalli @ Lalli Devi @ Bandana are named in the complaint petition of opposite party no. 2 along with Upendra Tiwary @ Pandit (petitioner of Criminal Misc. No. 17042 of 2014), husband of the deceased and two other co-accused, Komal Tiwary and Parkalu @ Pankaj Tiwary but specific allegation of demand of motorcycle and torturing for the same to the deceased is against Upendra Tiwary @ Pandit (petitioner of Criminal Misc. No. 17042 of 2014), Komal Tiwary and Parkalu @ Pankaj Tiwary. No specific overt act has been attributed against Punam @ Punam Kumari and Lalli @ Lalli Devi @ Bandana in the complaint petition. Paras Nath Tiwary (complainant-opposite party no. 2), his wife Shiv Kumari Devi, his son Upendra Tiwary and his brother-in-law Bhagwat Divedi, whose statement have been recorded in paragraph 5, 6, 7 and 8 of the case diary have not disclosed about act of Punam @ Punam Kumari and Lalli @ Lalli Devi @ Bandana (petitioners of Criminal Misc. No. 46485 of 2013), who are married Nanad of the deceased, have been maliciously named in the complaint petition which is the basis of the F.I.R.

8. In the result, the impugned order dated 27.08.2013 passed in Bhabhua P.S. Case No. 298 of 2016/ G.R. No. 1101 of 2006 and entire criminal proceeding in respect to



Punam @ Punam Kumari and Lalli @ Lalli Devi @ Bandana (petitioners of Criminal Misc. No. 46485 of 2013) is hereby quashed.

9. So far as Upendra Tiwary @ Pandit (petitioner of Criminal Misc. No. 17042 of 2014), who is the husband of the deceased, is concerned, there is specific allegation of demand of motorcycle and tortured his wife, deceased, Pratima @ Gudia Devi, daughter of opposite party no. 2. As such, I do not find illegality in impugned order dated 27.08.2013 taking cognizance for the offence under Sections 304(B) and 201/34 of the Indian Penal Code and Sections 3/4 of the Dowry Prohibition Act against Upendra Tiwary @ Pandit. Accordingly, Criminal Misc. No. 17042 of 2014 is dismissed.

(Rajendra Kumar Mishra, J)

Bhardwaj/-

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CAV DATE	
Uploading Date	
Transmission Date	

