

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.48181 of 2014

Arising Out of PS.Case No. -33 Year- 2013 Thana -MAHILA P.S. District- NALANDA (BIHARSHARIFF)

- =====
1. Ganesh Kumar
 2. Surya Mani Kumar Both son of Raja Ram Prasad Yadav
 3. Raja Ram Prasad Yadav @ Raja Ram Yadav S/o Late Mahavir Yadav
 4. Shakuntala Devi W/o Raja Ram Prasad Yadav
 5. Sulochana Devi
 6. Munchun Devi Both D/o Raja Ram Prasad Yadav
 7. Sangita Devi W/o Surya Mani Kumar
 8. Phula Devi W/o Bhshan Yadav All are resident of village Katchara, P.S. Bena, District - Nalanda.
 9. Ram Janam Yadav S/o Sanju Yadav R/o village Mosimpur, P.S. Chandi, District - Nalanda.

.... Petitioners

Versus

1. The State of Bihar.
2. Pinki Kumari D/o Suresh Prasad R/o village - Mushahri, P.S. Chero, District - Nalanda.

.... Opposite Parties

With

Criminal Miscellaneous No. 3196 of 2016

Arising Out of PS.Case No. -1434 Year- 2013 Thana -PATNA COMPLAINT CASE District- PATNA

- =====
1. Ganesh Kumar, S/o Shri Raja Ram Prasad Yadav.
 2. Suryamani Kumar, S/o Shri Raja Ram Prasad Yadav.
 3. Rajaram Prasad Yadav @ Raja Ram Prasad Yadav. S/o Late Mahabir Yadav, All are resident of Village- Kachra, P.S.- Bena, District- Nalanda.

.... Petitioners

Versus



1. The State of Bihar.

2. Pinki Devi @ Pinki Kumari, D/o Sri Suresh Prasad, W/o Sri Ganesh Kumar, R/o Village- Musahari, P.S- Harnaut, District- Nalanda, at present Railway Colony, Qtr. No. -199-K, Mahendrughat, P.S.- Pirbahore, District- Patna.

.... Opposite Parties

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Appearance :

For the Petitioners : Mr. Din Bandhu Singh, Advocate
For the State : Mr. Satyendra Nr. Singh, APP
For the Opposite Party/s : Mr. Durgesh Nandan, Advocate
Mrs. Manisha Prakash, Advocate

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**CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL JUDGMENT**

Date: 29-11-2017

Heard learned counsel for the petitioners,
learned counsel representing the complainant-Opposite
Party No. 2 and learned Additional Public Prosecutor for
the State.

2. Cr. Misc. No. 48181/2014 has been filed
by the husband (petitioner No.1), his brother (petitioner
No.2), the father and mother (petitioner Nos. 3 and 4),
two married sisters (petitioner Nos. 5 & 6), wife of elder
brother and younger brother (petitioner Nos. 7 & 8) and
the mediator (petitioner No.9), who had participated at the
time of negotiation of marriage between the petitioner No.
1 and the complainant-Opposite Party No. 2.

3. All these petitioners are seeking quashing



of the order dated 06.02.2014 passed by learned Sub-Divisional Judicial Magistrate, Biharsharif, Nalanda in connection with Mahila P.S. Case No. 33/2013, by which learned Magistrate took cognizance of the offence under Sections 498A, 541, 323, 504, 506/34 R/W section 3/4 of the Dowry Prohibition Act and summoned the petitioners.

4. Cr. Misc. No. 3196/2016 has been filed by the husband, his elder brother and father being petitioner Nos. 2 & 3 respectively for quashing of the order dated 23.09.2013, passed by learned Judicial Magistrate, 1st Class, Patna, in Complaint Case No. 1434(C) of 2013, by which the learned Magistrate has taken cognizance of the offences under Sections 498A/323 I.P.C. and issued summons to the petitioners.

5. Earlier, when Cr. Misc. No. 48181/2014 was heard on 18.10.2017, in view of the argument advanced on behalf of the parties an issue came to be considered as to how two cases may be allowed to continue at two different places on the same set of allegations, the relevant part of the order dated 18.10.2017 is quoted hereunder for ready reference: -

"In course of argument, in view of the



submission advanced at the bar particularly when an issue came to be considered as to how two cases may be allowed to continue at two different places on the same set of allegations. Learned counsel for the Opposite Party No. 2 made a submission that the cognizance taken in the complaint case may be quashed and the present order taking cognizance need not be interfered with, as it is his submission that even though this case was registered later on, but it was the result of the on going correspondences which were being pursued by the informant and the complaint case was filed later on though on the same set of allegations. Once this submission has come from the learned counsel representing the Opposite Party No. 2, learned counsel for the petitioners submits that the same may be considered by this court as he will have no objection to the same.

This being the position emerging from the submissions made from both the sides, in the opinion of this Court the present application is required to be heard along with Cr. Misc. No. 3196/2016 in which the order taking cognizance in the complaint case is under challenge.”



6. In view of the submissions made on behalf of the parties which have been taken note of hereinabove, the order taking cognizance and issuance of summons dated 23.09.2013 passed by learned Judicial Magistrate, 1st Class, Patna in Complaint Case No. 1434(C) of 2013 is hereby quashed.

7. Let it be reiterated that the Opposite Party No. 2 has made it very clear that she would proceed with the police case only and not the complaint case, and, therefore, what was recorded earlier has been once again taken note of for the purpose of quashing of the order taking cognizance in the complaint case. Cr. Misc. No. 3196/2016 is allowed.

Cr. Misc. No. 48181 of 2014

8. Now, coming to the order taking cognizance in the police case in Mahila P.S. Case No. 33/2013, learned counsel for the petitioners has placed before me the contents of the written complaint which form basis of the F.I.R. It is his submission that on a totally vague and omnibus kind of allegations the entire family members of the husband have been falsely implicated in the criminal case. In this case, this Court



had also called for the case diary which has been received and the learned Additional Public Prosecutor has assisted the Court by reading some of the relevant paragraphs of the case diary.

9. It has come in course of investigation that the marriage between petitioner no. 1 and the complainant was solemnized, when the father of the complainant promised to provide a job to the petitioner no. 1 and because he failed to provide the said job, a dispute arose and allegedly demand of a piece of land was being made by the petitioners. The allegation is that on non-fulfillment of the demand, the complainant was being tortured physically and mentally.

10. Learned counsel for the petitioners submit that in view of what has come in course of investigation the impleadment of the entire family is apparently a *mala fide* prosecution, and in a number of judicial pronouncements, the Hon'ble Supreme Court has held that this has now been a tendency to prosecute the entire family of the husband on the strength of vague and omnibus allegations. References in this regard have been made to the judgment of the Hon'ble Supreme Court in



the cases of ***Geeta Mehrotra vs. State of U.P. & Another*** reported in ***2012 (10) SCC 741*** and ***Pritam Ashok Sadaphule and Others vs. State of Maharashtra and Another*** reported in ***2015 (11) SCC 769***.

11. Submission is that from a bare reading of the F.I.R. it will appear that even though thrust of the allegation is against the husband, his elder brother, wives of the elder and younger brother, married sisters, mother and father. All have been brought within the purview of the prosecution, therefore, it has been submitted that the case of the family members (petitioner Nos. 2 to 8) and the mediator, against whom there is no allegation at all (petitioner no. 9), should be considered on a different footing, and if this Court is not inclined to interfere with the order taking cognizance as respect the husband (petitioner no. 1), the order taking cognizance, in so far as it relates to the family members and the mediator, need to be quashed. It is his submission that prosecution of the family members and mediator is definitely an abuse of the process of Court.

12. On the other hand, learned counsel



representing the complainant-Opposite Party No. 2 submits that, in the F.I.R., there are allegations against all the family members, as it has been stated that they were mentally and physically torturing the complainant-Opposite Party No. 2, and sometimes the Opposite Party No. 2 was not being provided food and her signature was obtained on a blank-sheet of paper.

13. Learned counsel further submits that the complainant-Opposite Party No. 2 was being administered medicines causing her intoxication. It is the submission of learned counsel representing the Opposite Party No. 2, while it is true that the view of the Hon'ble Supreme Court is that the case of the family members be considered differently, but, at the same time, the Hon'ble Supreme Court has also held that if there are allegations against the family members, then, the prosecution should not be quashed. In this regard, learned counsel relies upon the judgment in the case of ***Taramani Parakh vs. State of M.P.*** reported in ***(2015) 11 SCC 260***.

14. Learned counsel for the complainant-Opposite Party No. 2 has, however, fairly submitted at least to this extent that there are no specific allegations



against the female members of the family who are named in the F.I.R. and, therefore, this Court may, if at all, willing to consider the case of the female members on a different footing, the case of the female members may only be considered to that extent.

15. Learned Additional Public Prosecutor representing the State has read out the statements made in the case diary. In course of investigation, police has recorded the statement of the informant, her father and brother and she was also sent for medical examination, but, in the case diary, no injury has been reported to be present on the body of the informant. There are some independent witnesses whose statements are recorded in paragraphs 36 and 37 of the case diary. According to which the marriage between the petitioner no. 1 and the informant was solemnized only because the father of the informant promised a job to the unemployed boy and because after marriage he could not provide the job, therefore, there was a demand for the land.

16. I have considered the submissions made at the bar and have perused the records. A perusal of the F.I.R. coupled with the statements of the witnesses



recorded in the case diary, as has been read out by the learned Additional Public Prosecutor, would show that the matrimonial dispute between the parties have arisen because of the alleged promise said to have been made by the father of the informant to petitioner No.1. There are allegations of demand of a piece of land, but so far as allegations against the family members, which I have taken note of in the submissions of the parties in detail hereinabove are concerned, those are not specific, at least against the family members. The allegations are vague and have been apparently made with an intention to implicate them in the present case. It has been seen that in the complaint petition, which was filed later on while correspondences giving rise to the present police case was still going on, the cognizance and summoning order was passed only against the husband, father-in-law and brother-in-law. The learned Magistrate while taking cognizance in the complaint case had not even *prima facie* believed the other story. The statement of the independent witnesses in the case diary, which have been taken note of hereinabove, also go to show that, so far as family members are concerned, as also the



mediator, they have been named in the F.I.R. without there being any specific allegations of commission of any overt act causing any torture to the complainant-Opposite Party No. 2. What has been alleged in the F.I.R. is completely vague and not sufficient to proceed against them. The judgment on which reliance has been placed by the learned counsel for the petitioners fully support the contention advanced on behalf of the petitioners Nos. 2 to 9.

17. In view of what has been found or could be gathered from the materials available on the record, I am of the considered opinion that the prosecution of the family members including the female members and the mediator is only an abuse of the process of the Court and the order taking cognizance and issuance of summon in so far as it relates to petitioner Nos. 2 to 9 needs to be quashed in the interest of justice, and the same is hereby quashed with respect to petitioner Nos. 2 to 9. So far as petitioner No. 1 is concerned, he being the husband and against him there are allegations, I am not inclined to interfere with the impugned order against petitioner No.1, the prayer on his behalf is, accordingly, rejected.



18. In the result, Cr. Misc. No. 48181/2014
is partly allowed to the extent indicated above.

(Rajeev Ranjan Prasad, J.)

Rajeev/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	01.12.2017
Transmission Date	01.12.2017

