

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.11127 of 2014

Arising Out of PS.Case No. -426 Year- 2012 Thana -BUXAR District- BUXAR

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1. Mandodary Devi Wife Of Late Hari Shankar Pandey Resident Of Village Karahansi, P.S.-Buxar, Dist.-Buxar
 2. Rakesh Pathak Son Of Chandrabhushan Pathak Resident Of Village Futa, P.S. Barahra, Dist.-Bhojpur (Ara)
 3. Rita Devi Wife Of Ram Praesh Upadhyay Resident Of Village Gahmar, Bachawa Tola, P.S. - Gahmar, Ist.-Gajipur (U.P.)
 4. Ram Pravesh Upadhyay Son Of Brahmanand Upadhyay Resident Of Village Gahmar, Bachawa Tola, P.S. - Gahmar, Ist.-Gajipur (U.P.)
 5. Brahmanand Upadhyay Son Of Late Surya Nath Upadhyay Resident Of Village Gahmar, Bachawa Tola, P.S. - Gahmar, Ist.-Gajipur (U.P.)
 6. Om Prakash Upadhyaya Son Of Bhrahmanand Upadhyaya Resident Of Village Gahmar, Bachawa Tola, P.S. - Gahmar, Ist.-Gajipur (U.P.)
 7. Pritam Devi Wife Of Brahmanand Upadhyaya Resident Of Village Gahmar, Bachawa Tola, P.S. - Gahmar, Ist.-Gajipur (U.P.)
 8. Mukesh Kumar Upadhyaya @ Mukesh Upadhyaya Son Of Om Prakash Upadhyay Resident Of Village Gahmar, Bachawa Tola, P.S. - Gahmar, Ist.-Gajipur (U.P.)
 9. Neha Kumar @ Niha Kumari Daughter Of Om Prakash Upadhyay Resident Of Village Gahmar, Bachawa Tola, P.S. - Gahmar, Ist.-Gajipur (U.P.)
 10. Archana Kumari Daughter Of Om Prakash Singh Resident Of Village Gahmar, Bachawa Tola, P.S. - Gahmar, Ist.-Gajipur (U.P.)
 11. Rakesh Kumar Upadhyay @ Rakesh Upadhyay Son Of Om Prakash Upadhyay Resident Of Village Gahmar, Bachawa Tola, P.S. - Gahmar, Ist.-Gajipur (U.P.)

.... Petitioner/s

Versus

1. State Of Bihar
2. Shakuntala Devi @ Baby Devi Wife Of Kanhaiya Mishra Resident Of Mohalla - Nehru Nagar, (Ward No. 20) P.S - Buxar (Town), Dist.-Buxar

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Bachan Jee Ojha
For the Opposite Party No. 2 : Mr. Gopal Pandey
For the State : Mr. Tapeswar Sharma, APP

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CORAM: HONOURABLE MR. JUSTICE SANJAY KUMAR

ORAL JUDGMENT

Date: 06-10-2017

This application under Section 482 of the Code of Criminal Procedure has been filed to quash the order dated



08.01.2014 passed by the learned CJM, Buxar in G.R. No. 2581 of 2012 arising out of Buxar (T) P.S. Case No. 426 of 2012 whereby and whereunder the learned Magistrate took cognizance under Section 498-A of the Indian Penal Code and Section 3/ 4 of the Dowry Prohibition Act against the petitioners.

2. Heard the learned counsel for the petitioners, the learned counsel for the Opposite Party No. 2 and the learned APP for the State.

3. The petitioner No. 11 is the son-in-law of the Opposite Party No. 2 and other petitioners are parents and distant relatives of the petitioner No. 11. The Opposite Party No. 2 has filed a complaint case against these petitioners alleging inter alia that her daughter was married with the petitioner No. 11 on 25.04.2012 and when her daughter went at the place of her husband, they started torturing and assaulting her as the demand of one car and two lacs cash amount was not fulfilled. She has further alleged that on 02.11.2012, her son-in-law came and took her daughter to Vishakhapatnam by train and on the following day, her son-in-law informed that her daughter has become traceless. The complainant accordingly filed the complaint case for the offence under Sections 304-B, 201 and 498-A of the Indian Penal Code and Section 3 /4 of the Dowry Prohibition Act against the petitioners.



4. On perusal of complaint petition and document produced on their behalf, it appears that the allegation of demand of car and cash amount has levelled against the petitioners for the first time by filing the complaint case. It is not in dispute that the petitioner No. 11 took the daughter of the complainant to Vishakhapatnam by train and while travelling she suddenly got down. When the husband woke up he did not find his wife and so, he lodged an F.I.R. at Vishakhapatnam as regards her becoming traceless vide G.R.P. Case No. 180 of 2012 dated 04.11.2012. The present complaint case was registered as Buxar Town P.S. Case No. 426 of 2012. The matter was investigated and police submitted charge-sheet only for the offence under Section 498-A of the Indian Penal Code against all the petitioners except Ram Pravesh Upadhyaya and Brahmanand Upadhyay. The learned Magistrate however took cognizance against all the petitioners. The learned counsel for the petitioners vehemently contended that the daughter of the complainant had or has no grievance either against her husband or any of the petitioners. The complainant of the present case is mother-in-law of the petitioner No. 11 and she in order to extort money is pursuing this case. The complainant has married her daughter to another person and so, she is not willing to go at the place of her husband. It further appears that the wife and husband were directed to remain physically present in



Court as per order dated 18.07.2017, but the daughter of the complainant did not appear in Court on 17.08.2017 and so, the case was listed for hearing on merit. The allegation of torture appears omnibus against all the petitioners except petitioner No. 11, who is the husband of the complainant.

5. In this regard, I would like to refer the cases of Neelu Chopra Vs. Bharti (2009)10, SCC 184. Geeta Mehrotra and others Vs. State of UP & others (2012)10 SCC page 741, 2013(2) PCCR 210 (S.C.) and Preeti Gupta & others Vs. State of Jharkhand & others (2010) 7, SCC page 667 wherein the Hon'ble Apex Court has reiterated that in absence of specific allegation and prima facie case against co-accuseds, the order taking cognizance will be bad in law and that will be an abuse of process of court.

The facts of the present case is similar to the case decided by Apex Court. Except petitioner No. 11, other petitioners are in-laws and distant relative of the daughter of the complainant and the allegation against them appears omnibus. In such circumstance, criminal prosecution of in-laws would be an abuse of process of Court.

6. In view of the above, the order dated 8.1.2014 taking cognizance against the petitioner Nos. 1 to 10, who are in-laws and distant relatives of the daughter of the complainant as well as their



criminal prosecution is quashed. The criminal prosecution of husband (petitioner No. 11) will however continue. The court below is directed to expedite the trial directing the complainant to produce her daughter and other witnesses regularly without taking unnecessary adjournment.

7. With the above observations, this criminal miscellaneous application is disposed of.

(Sanjay Kumar, J)

ajay gupta/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	12.10.2017
Transmission Date	12.10.2017

