

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.34952 of 2013

Arising Out of PS.Case No. -23 Year- 2013 Thana -COMPLAINT CASE District- JAMUI

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1. Wasim Quraishi S/O Nasim Quraishi Resident Of Mohalla- Ganichak,
Police Station- Mojahidpur, District- Bhagalpur

2. Kasim Quraishi S/O Nasim Quraishi Resident Of Mohalla- Ganichak,
Police Station- Mojahidpur, District- Bhagalpur

3. Shamim Quraishi S/O Nasim Quraishi Resident Of Mohalla- Ganichak,
Police Station- Mojahidpur, District- Bhagalpur

.... Petitioner/s

Versus

1. The State Of Bihar & Anr (Anr. Details Missing)

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Md. Najmul Hodda

For the Opposite Party/s : Mr. Shantanu Kumar(App)

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CORAM: HONOURABLE MR. JUSTICE VINOD KUMAR SINHA
ORAL ORDER

5 18-01-2017 Heard the parties.

By way of the present application filed under Section 482 of the Code of Criminal Procedure, the petitioners seek quashing of the order, dated 20.03.2013, passed by learned S.D.J.M. Jamui in Complaint Case No. 23C of 2013, by which he issued process under Section 498A of the Indian Penal Code and Section 3/4 of the Dowry Prohibition Act.

Prosecution case is that on 07.01.2013, the opposite party no. 2 filed a petition in the Court of learned Chief Judicial Magistrate, Jamui stating that her marriage was solemnized with one Md. Jasim Qureshi (brother of the petitioners) as per muslim



rites and customs and after marriage, she was living peacefully in her matrimonial home and out of the said wedlock four children were born but after two years of the marriage, accused persons started demanding Rs. 50,000 and a colour T.V. as a dowry and on non fulfillment of the said demand, complainant was subjected to torture. Further case of the prosecution is that when the parents of opposite party no. 2 come to her matrimonial house to reconcile the matter, the accused persons beaten the opposite party no. 2 in front of her parents, upon which she came back to her naihar along with her father and since then she is living in her maika.

On the basis of the aforesaid complaint, a Complaint Case 23C of 2013 was instituted and the case was transferred to S.D.J.M., Jamui, who after enquiry under Section 202 of the Cr.P.C. finding the *prima facie* the case under Section 498A and Section 3/4 of the Dowry Prohibition Act, to be true ordered for issuance of processes against these petitioners vide order, dated 20.03.2013, which is under challenge in the present application.

It has been submitted on behalf of the petitioners that from perusal of the complaint petition itself, it appears that only general and omnibus allegations have been levelled against these petitioners, who happens to be the brother of the husband of opposite party no. 2. It has further been submitted that these



petitioners have no concern with the affairs of wife and husband. It has further been submitted that the opposite party no. 2 has already compromised the case with her husband, who was prime accused in this case and has been living peacefully with him but these petitioners are put to pay for the offence, which they have not done. It is also submitted that the Apex Court in its catena of decisions has observed that generally in a matrimonial case whole family members are made accused without assigning any specific reason and also observed that Court at the time of taking cognizance had to examine as to what are the specific allegations attributed against each accused persons but the learned Court ignoring the above established propositions took cognizance/issued processes against these petitioners, which is clearly an abuse of process of law, therefore, the order passed by learned S.D.J.M. Jamui, issuing processes, is fit to be quashed.

Learned Additional Public Prosecutor opposed the quashing application and submitted that the learned Court below after carefully consideration of the materials available on record has passed the impugned order.

From perusal of record, it appears that notices have been issued to the opposite party no. 2 and vide order, dated 23.06.2014, it was deemed to have been served by this Court,



however nobody appeared on behalf of opposite party no. 2.As the case is of the year 2013 and further proceeding in the Court below is stayed vide order, dated 10.04.2014, it is proper to decide the same.

Having heard both sides and perused the materials available on record. It transpires that no specific allegations have been attributed to the present petitioners and the allegations that have been levelled are only general and omnibus in nature. Further the learned Court below without mentioning as to what are the specific materials available before the learned Court below against the petitioner, ordered for issuance of process.

In such view of the matter, the order, dated 20.03.2013, passed by learned S.D.J.M, Jamui is not sustainable in the eye of law and the same is hereby quashed.

Accordingly, the present application is allowed.

(Vinod Kumar Sinha, J)

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