

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.47931 of 2014

Arising Out of PS.Case No. -2169 Year- 2009 Thana -WEST CHAMPARAN COMPLAINT District-
WESTCHAMPARAN(BETTIAH)

- =====
1. Ajay Kumar @ Laddu @ Laddu Mallik @ Ajay Kumar Mallik, Son of Late Sona Mallik
 2. Vidya Devi, Wife of Late Sona Mallik
 3. Pramod Mallik, son of Late Sona Mallik, All Resident of Naurangabad Dom Toli, P.S.- Bettiah Nagar, District- West Champaran

.... Petitioners

Versus

1. The State of Bihar
2. Mina Devi, Daughter of Mangali Mallik, Resident of Village- Fuldarwa, P.S. Jagdishpur, District- West Champaran

.... Opposite Party

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Appearance :

For the Petitioners	:	Dr. Amrendra Kumar, Advocate
For the OP No. 2	:	Mr. Sanjeev Kumar, Advocate
For the State	:	Mr. Brujendra Nath Pandey, APP

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL JUDGMENT

Date: 27-11-2017

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

2. Petitioner No. 1 is the husband, whereas
petitioner Nos. 2 & 3 are mother-in-law and Dewar



respectively of the complainant-Opposite Party No. 2.

3. All these petitioners are seeking quashing of the order dated 23.07.2012 passed by learned Sub-Divisional Judicial Magistrate, Bettiah, West Champaran in Complaint Case No. 2169(C) of 2009 by which learned Magistrate has taken cognizance of the offences under Section 498A of the Indian Penal Code and 3/4 of the Dowry Prohibition Act and issued summon to the petitioners-accused.

4. Learned counsel for the petitioner submits that a bare perusal of the statement made in the complaint petition would show that the marriage, in the present case, between the petitioner No. 1 and the complainant-Opposite Party No. 2 took place 10 years ago in accordance with Hindu rights and customs. It is admitted by the complainant-Opposite Party No. 2 that after marriage for few years the behaviour of the accused persons were good and there was no complaint against them. The complainant-Opposite Party No. 2 gave birth to one son and one daughter who were aged about 7 years and 3 years respectively at the time of lodging of the complaint. The allegation comes at this stage, as according to the complainant-Opposite Party No. 2 after



birth of the two children, all the accused persons were pressurizing her to demand one colour Television and Motorcycle from her father which the complainant-Opposite Party No. 2 was protesting. It is further alleged that on denial by the complainant-Opposite Party No. 2, the accused persons were torturing her mentally and physically in different ways. The complainant-Opposite Party No. 2 alleged that on the provocation or abetment of accused No. 2 & 3, the accused No. 1 assaulted her causing fracture in one of her fingers of the left hand. It is also alleged that on the abetment of accused Nos. 2 to 4, the accused No. 1 solemnized a second marriage two years ago and after the said second marriage his behaviour went from bad to worse. There are further allegations that accused No. 2 poured kerosene oil on the body of the complainant-Opposite Party No. 2, accused No. 3 to 5 put her down on the floor and were pressing her neck, whereas accused No. 1 was going to burn her by using matchbox, but, on raising *hulla*, the neighbours ran to her place and in this way the complainant-Opposite Party No. 2 could be saved. It is alleged that the accused persons assaulted the complainant-Opposite Party No. 2 and



snatched her money which has been quantified as about Rs. 20,000/-. The complainant-Opposite Party No. 2 along with her daughter was allegedly thrown out of her house on 01.01.2009, thereafter on many occasions Panchayati were held but ultimately the accused persons refused to keep the complainant-Opposite Party No. 2.

5. The complainant-Opposite Party No. 2 herself states that she has lodged a F.I.R. in this respect in the Police Station but the same was lodged only against the accused No. 1. it is stated that pursuant to the said F.I.R., the accused No. 1, when applied for anticipatory bail in the court of learned Sessions Judge, gave an undertaking to keep the complainant-Opposite Party No. 2 with full dignity and care, but after keeping her for about 15 days, on the provocation of accused No. 5, the complainant-Opposite Party No. 2 was being tortured physically and mentally.

6. It is alleged that on 20.05.2009, the accused No. 1 came in a drunken condition in the house and assaulted the complainant-Opposite Party No. 2 and further threw her cloths etc. out of the house. Accused Nos. 2 to 5 are said to have threatened the complainant-Opposite Party



No. 2 by saying that she would not take any effort to enter in the house.

7. Learned counsel for the petitioners has drawn my attention towards the F.I.R. dated 15.02.2009, as contained in Annexure-5 to the present application. A written complaint of the present complainant-Opposite Party No. 2 on the basis of which F.I.R. was lodged under Section 341, 323, 504 and 498A of the I.P.C. is virtually the anchor-sheet of the argument of the learned counsel representing the petitioners. Learned counsel submits that in the F.I.R. there is no whisper of allegations against the petitioner Nos. 2 & 3. The whole thrust of the allegations in the F.I.R. are directed against the petitioner No. 1 alone. Thus, according to learned counsel, in the present complaint petition, she has apparently improved upon the allegations made in the F.I.R. and this time a false story has been narrated by making flimsy allegations against petitioner Nos. 2 & 3 as well.

8. Learned counsel further submits that in fact the motive behind filing of the present complaint is also reflected in the complaint petition, when complainant-Opposite Party No. 2 herself says at one stage that she had



lodged the F.I.R. under Section 498A I.P.C., but the case was lodged only against accused No. 1.

9. Thus, according to learned counsel, it is evident that only to falsely implicate the other family members, who are closely related to the husband of the complainant-Opposite Party No. 2, the present case has been lodged.

10. It is further pointed out that the complaint case has been lodged on or about 14.09.2009 by setting up an occurrence by way of further cause of action shown to have taken place on 20.05.2009 when allegedly the husband of the complainant-Opposite Party No. 2 came in a drunken condition in the house and assaulted her. At this stage, no act or omission causing any torture either physically or mentally has been alleged against petitioner Nos. 2 & 3.

11. Learned counsel for the petitioners, therefore, submits that although in his submission the whole case has been lodged on a false and flimsy allegations and the order taking cognizance and issuance of summons are fit to be quashed in respect of all the petitioners, but in any case his submission would be that so far as petitioner Nos. 2



& 3 are concerned, they have been implicated only because they happened to be the kith and kin of the husband. This is apparent from the fact that F.I.R. lodged on 26.02.2009 did not contain a single word of allegation against these petitioners Nos. 2 & 3. In this regard, reliance has been placed on the judgment of the Hon'ble Supreme Court in the case of ***Geeta Mehrotra vs. State of U.P. & Another*** reported in ***2012 (10) SCC 741*** and in the case of ***Pritam Ashok Sadaphule and Others vs. State of Maharashtra and Another*** reported in ***2015 (11) SCC 769***.

12. On the other hand, learned counsel representing the complainant-Opposite Party No. 2 submits that the allegations made in the complaint petition and the deposition of the enquiry witnesses sufficiently indicate the materials available on the record for taking a *prima facie* view and the learned Magistrate has committed no error by issuing summons to the petitioners.

13. In course of argument, learned counsel for the complainant-Opposite Party No. 2 has however fairly submitted to this extent that so far as petitioner Nos. 2 & 3 are concerned, their cases may be distinguishable with the



case of petitioner No. 1, and in their case the judgment of the Hon'ble Supreme Court may perhaps be useful.

14. I have heard learned counsel for the parties and perused the record. It is apparent from the facts and circumstances of the present case that, on 15.02.2009, when the F.I.R. was lodged by the present complainant- Opposite Party No. 2, giving rise to Bettiah Town P.S. Case No. 37/2009, no allegation at all was made against petitioner Nos. 2 & 3. In the said F.I.R., the entire allegations have been specifically made against her husband. The complainant- Opposite Party No. 2 has stated that she was living well with her husband earlier but for the last about one year he had started abusing and torturing her. It is apparent from the F.I.R. that the dispute between the husband and the wife started about one year prior to lodging of the F.I.R. In the F.I.R., there is no allegation at all either of demand of dowry or of causing any provocation by petitioner Nos. 2 & 3 in the act of torture allegedly committed by the husband. If the allegations made in the F.I.R. and the present complaint petition are considered side by side, it is evident that while drafting the complaint petition a story has been made out



against the petitioner Nos. 2 & 3 vaguely stating that they were causing provocation to the husband for the offences alleged and they had done certain acts and omissions which may bring them within the purview of the offences alleged.

15. To me, it is very clear that allegations made against petitioner Nos. 2 & 3 in the complaint petition are false story and have been made purposely by way of improvement upon the first version of the complainant, this was done in order to implicate petitioner Nos. 2 & 3 who happened to be the mother and younger brother of petitioner No. 1.

16. In the facts and circumstances apparent from the records, I am of the considered opinion that so far as petitioner No. 1 is concerned, since the entire thrust of allegations are against him, it is not a fit case for interference with the order issuing summon as against petitioner No. 1 and the prayer made by him for quashing of the impugned order is hereby rejected.

17. As has been held hereinabove, the allegations against petitioner Nos. 2 & 3 in the complaint petition are by way of improvement and have been made



vaguely only subsequently after lodging of the F.I.R. in which there was no whisper of allegations against them, I am of the view that the continuance of the proceeding against petitioner Nos. 2 & 3 is only be an abuse of the process of the Court. This view is duly strengthen from the pronouncement of the Hon’ble Supreme Court in the case of **Geeta Mehrotra (Supra)** and the judgment rendered in the case of **Pritam Ashok Sadaphule and Others vs. State of Maharashtra and Another** reported in **2015 (11) SCC 769**; where Hon’ble Supreme Court has been pleased to set aside the criminal proceedings launched against the close relatives of the husband on vague allegations.

18. In the result, the order taking cognizance and issuance of summons in so far as it relates to petitioner Nos. 2 & 3 is hereby quashed.

19. This application is, thus, partly allowed.

Rajeev/-

(Rajeev Ranjan Prasad, J.)

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	28.11.2017
Transmission Date	28.11.2017

