

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.29157 of 2013

Arising Out of PS.Case No. -697 Year- 2007 Thana -NAWADAH COMPLAINT CASE District-
NAWADA

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1. Shailendra Kumar @ Shailendra Pandey,
 2. Mrityunjay Pandey,
 3. Nirmal Chandra @ Kishori Pandey, all son of late Rajendra Pandey, R/O Village- Sonsa, P.S.- Hisua, District- Nawada,
 4. Kavita Kumari @ Kavita Kumar, D/O Late Rajendra Pandey, R/O Village- Sonsa, P.S.- Hisua, District- Nawada
 5. Rekha Devi, W/O Vinod Pandey @ Abhay Pandey,
 6. Vinod Pandey @ Abhay Pandey, S/O Saket Pandey @ Sachida Pandey, both resident of village- Bikkoo, P.S.- Naradiganj, District- Nawada
 7. Indira Devi @ Inder Devi, W/O Late Rajendra Pandey, R/O Village- Sonsa, P.S.- Hisua, District- Nawada
 8. Minu Kumari @ Nikki Kumari, D/O Late Ramnandan Pandey, R/O Village- Maranchi, P.S.- Maranchi, Distt.- Patna
 9. Sunita Devi, W/O Mrityunjay Pandey, R/O Village- Sonsa, P.S.- Hisua, District- Nawada

.... Petitioner/s

Versus

1. The State of Bihar
2. Kumari Ranjana, D/O Late Yadunandan Pandey, R/O Village- Mahabatpur, P.S.- Sirdala, District- Nawada

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Amit Kumar, Advocate
For the Opposite Party/s : Mr. Madan Kumar, APP
Mr. Rakesh Ranjan Kumar, Advocate

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CORAM: HONOURABLE MR. JUSTICE SANJAY PRIYA

ORAL JUDGMENT

Date: 02-02-2017

1. This application under Section 482 of the Code of Criminal Procedure has been filed for quashing the order dated 02.04.2009 passed by the Sub-Divisional Judicial Magistrate, Nawada, in Complaint Case No.697 of 2007, by which the learned Magistrate after holding enquiry has found *prima facie* case against



the petitioners for the offence under Section(s) 498-A and 494 Indian Penal Code and Section 4 of the Dowry Prohibition Act.

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

3. It has been submitted on behalf of the petitioners that entire proceeding against these petitioners is bad in law and abuse of the process of Court. Alleged marriage is not admitted by petitioner No.1. Marriage of petitioner No.1, and the Opposite Party No.2, was performed after kidnapping him, which was informed to the police by the petitioner No.2. Father of the petitioner No.1 was abducted and killed as he was never found after abduction. Mother of the petitioner No.1 lodged First Information Report No.50 of 1995 under Section(s) 364, 302, 201/34 Indian Penal Code in Hisua Police Station. The police after investigation submitted charge-sheet against all the accused persons named in Hisua P.S. Case No.50 of 1995. The petitioner No.1 was examined as prosecution witness in that case on 11.10.2002. The petitioners were totally under threat and shifted outside the village and they did not get support either from the police or from the witnesses. Accused persons of Hisua P.S. Case No.50 of 1995 were finally acquitted by the Additional Sessions Judge, II, Fast Track Court, Nawada, vide Sessions Trial



No.47 of 1999 / 10 of 2001. The petitioner No.1 thereafter shifted to Delhi in 1999 and after completion of LLB from Campus Law Centre, University of Delhi, in the year 2002, he got himself enrolled with the Bar Council of Delhi, where he is practicing as an Advocate in the Supreme Court of India. The petitioner No.1 had no concern with the family of the complainant after 1993. The whole allegations are baseless and have been fabricated for the purpose of taking revenge of the criminal case instituted by the mother of petitioner No.1 against the family members of the complainant. Apart from the fact that the allegations made in complaint are inherently improbable, this is a case of malicious prosecution and the criminal proceedings are fit to be quashed.

4. Petitioner Nos.5 and 6, who are the sister and brother-in-law of the petitioner No.1, have been maliciously dragged in the whole story. Petitioner Nos.2 and 3 are the brothers of the petitioner No.1, who are employed in Delhi and Mohali respectively. Petitioner No.2 is working in Army Welfare Housing Organization, which is a sister concern of the Defence Ministry, and the petitioner No.3 is working as an Engineer in Cheema Boilers Ltd. Petitioner No.4 is unmarried sister of the petitioner No.1, who has been dragged only to destroy her marriage prospects. She is living in Delhi with petitioner Nos. 2 and 9, thus, the story of their



having caused any cruelty with the complainant is beyond imagination. The proceeding against the petitioners is malafide. Learned counsel for the petitioners has relied on the judgment of the Hon'ble Supreme Court in the case of ***Geeta Mehrotra and another Vs. State of U.P. and another*** reported in ***2013 (1)PLJR 10*** in support of his argument.

5. The petitioner No.1 filed a petition on 16.07.2012 before the Principal Judge, Family Court, Nawadah, under Section(s) 5, 11, and 12 of the Hindu Marriage, 1955, for declaring the marriage of the petitioner void, invalid, illegal and non-existent in the eye of law, which is still pending. Petitioner No.1 is happily married with petitioner No.8, Minu Kumari @ Nikki Kumari, and blessed with a son, Master Shaurya and a daughter, Ms. Shailza. So, considering all these, it will be sheer harassment of the petitioners to face trial on false and fabricated grounds.

6. On the other hand, counsel for the Opposite Party No.2 has submitted that the petitioner No.1 was married with the Opposite Party No.2. He committed cruelty with her for demand of dowry and finally ousted her from the house on 24.07.2007 after assaulting her in Sasural. The Officer-in-Charge, Hisua, did not register First Information Report and, therefore, Complaint Petition was filed. Petitioner No.1 performed another marriage with



petitioner No.8 in conspiracy with other accused persons without consent of Opposite Party No.2.

7. Having heard the parties and from perusal of the impugned order, Solemn Affirmation of the complainant as well as statement of the five witnesses, this Court finds that the complainant has alleged that she was married in the year 1993 with Shailendra Pandey according to Hindu rites and customs. The petitioner No.1 with other accused persons made demand of rupees one lac, which could not be fulfilled by the family members of the Opposite Party No.2. Thereafter, Opposite Party No.2 was tortured mentally and physically by the accused persons for the aforesaid demand. The parents of the complainant gave rupees fifty thousand to the accused persons and they took the complainant to Sasural after Bidagari in 2006. She was physically and mentally tortured in Sasural for demand of more dowries. The complainant showed her inability due to poor economic condition, and then she was tortured by the accused persons. They also did not give her proper medicine and clothes. The husband of the Opposite Party No.2 performed another marriage with Nikki Kumari (petitioner No.8), on the instigation of Nanad, Nandosi and other accused persons. They finally, ousted the Opposite Party No.2 from the house on 24.07.2007 after abusing and assaulting her. The complainant went to Hisua P.S., but the



police did not register the case and then the complainant filed Complaint Petition in the Court.

8. Typed copy of Solemn Affirmation of the complainant and the statement of five witnesses recorded during enquiry have been annexed with the petition as Annexure-2 series. The complainant has stated in her Solemn Affirmation that she was married with Shailendra Pandey, petitioner No.1. Articles worth rupees fifty thousand was given at the time of marriage and she went to Sasural. She was tortured in the Sasural by all the accused persons. They stopped her meals and made demand of rupees one lac in dowry and due to non-fulfillment of the aforesaid demand they ousted her from the Sasural. At present, she is living in her Naihar. Her husband has performed second marriage. To a court question, she stated that she is living in Naihar. The accused persons have ousted her from the house after assaulting her. Almost similar statements have been made by other five witnesses, examined during enquiry.

9. In this manner, from the perusal of Solemn Affirmation of the complainant and the statement of five witnesses recorded during enquiry as well as allegation in the Complaint Petition, this Court finds that specific overt act has been alleged against the petitioner No.1 of committing physical and mental



torture with the complainant-Opposite Party No.2 and of performing second marriage with petitioner No.8.

10. The petitioners have stated in para 22 of the petition that petitioner No.1 has filed a petition on 16.07.2012 before the Principal Judge, Family Court, Nawadah, under Section(s) 5, 11 and 12 of the Hindu Marriage, 1955, for declaring the marriage void, invalid, illegal and non-existent in the eye of law, which is still pending. It has been stated in para 23 that the petitioner No.1 had performed marriage with petitioner No.8. In this manner, such admission of the petitioners in para 22 and 23 supports the allegation of the complainant in her Solemn Affirmation against the petitioner No.1 of committing physical and mental torture with her due to non-fulfillment of demand of dowry and marrying petitioner No.8 without her consent.

11. Therefore, from the nature of allegation in the Complaint Petition, Solemn Affirmation of the complainant, as well as statement of five witnesses recorded during enquiry, this Court comes to the finding that *prima facie* case for the offence under Section(s) 498-A, 494 Indian Penal Code and Section 4 of the Dowry Prohibition Act is made out against the petitioner Nos.1 and 8.

12. So far allegation against petitioner Nos.2 to 7 and



9 are concerned, it is mentioned in the Complaint Petition itself that they are the family members of petitioner No.1. There is no allegation of any overt act against them in the Complaint Petition or in the Solemn Affirmation of the complainant or in the statement of the five witnesses recorded during enquiry.

13. Therefore, the learned Magistrate has committed illegality in passing the impugned order by which he has taken cognizance for the offence under Section(s) 498-A, 494 Indian Penal Code and Section 4 of the Dowry Prohibition Act against these petitioners.

14. Accordingly, the order dated 02.04.2009 passed by the Sub-Divisional Judicial Magistrate, Nawada, in Complaint Case No.697 of 2007 with respect to petitioner Nos. 2 to 7 and 9 along with entire criminal proceeding is hereby quashed.

15. So far the impugned order with respect to petitioner Nos.1 and 8, by which *prima facie* case was found against them under Section(s) 498-A, 494 Indian Penal Code and Section 4 of the Dowry Prohibition Act, this Court finds that the same does not suffer from any illegality as all the witnesses in their statement during enquiry including the complainant in her Solemn Affirmation have levelled specific allegation against them.

16. The learned Trial Court is directed to proceed



with the trial of petitioner Nos. 1 and 8 in accordance with law.

17. In the result, this application is allowed in part.

(Sanjay Priya, J)

J.Alam/-

AFR/NAFR	AFR
CAV DATE	11-01-2017
Uploading Date	05-02-2017
Transmission Date	05-02-2017

