

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.17793 of 2013

Arising Out of PS.Case No. -2364 Year- 2004 Thana -PATNA COMPLAINT CASE District-
PATNA

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Bharti Kumari @ Bhurati Kumari, W/O Surendra Sharma, Resident of Mohalla-
Indra Nagar, Mainpura, P.S.- Patliputra, District- Patna

.... Petitioner/s

Versus

1. The State Of Bihar
2. Kiran Devi, W/O Sri Surendra Sharma, R/O Mohalla- Kurzi Baluwapar, P.S.-
Dujara, Distt.- Patna

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Mukesh Kumar Singh, Advocate.
For the State : Mr. Ajay Kumar No. 1, APP
For the O.P. No. 2 : Mrs. Kiran Devi (in person).

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CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR

ORAL JUDGMENT

Date: 02-11-2017

Heard learned counsel for the petitioner, learned counsel
for the State and O.P. No. 2 appearing in person.

2. Petitioner, invoking the inherent jurisdiction of this
Court, under Section 482 of the Code of Criminal Procedure, 1973,
seeks quashing of cognizance order dated 28.09.2004 passed by the
Sub Divisional Judicial Magistrate, Patna in Complaint Case No. 2364
of 2004 thereby taking cognizance of offence under Sections 323,
498A and 506 of the Indian Penal Code and also issued summons
against the petitioner to stand trial in the case.

3. Short fact giving rise to this case is that complainant
was married with Surendra Sharma on 30.06.1987 and out of their



wedlock, three children were born but after marriage, all the family members used to make demand of one katha land, when demand was not fulfilled by the father of the complainant, they used to assault and torture her to realize the demand. It is also alleged that her husband used to neglect her and her children and not maintaining them. Besides this, her husband has developed illicit relationship with Bharti Kumari, this petitioner, and she also used to visit the house of the husband of the complainant but the complainant used to protest her visit, on account of that, all accused persons used to assault her. Complainant having no alternative, lives with her parents along with her children.

4. Learned counsel appearing on behalf of the petitioner submits that only allegation against the petitioner is that the complainant's husband has illicit relationship her but there is no allegation against this petitioner regarding making any demand in dowry or torturing complainant in that connection. He further submits that other family members, except the husband, all accused in this case, approached this Court earlier for quashing cognizance order and the same was set aside by order dated 01.11.2012 passed in Cr. Misc. No. 974 of 2008, as the Court disbelieved the allegation of making demand of dowry and torture from the period 1987 to 2004, i.e., from the date of marriage to filing of the complaint case.



5. Complainant, O.P. No. 2 in the present application, appears in person, submits that this petitioner lives with her husband having illicit relationship between them and so she is being neglected by her husband.

6. Having considered the rival submissions and on perusal of record, the Court finds complete absence of any allegation against this petitioner regarding torturing the complainant in connection with demand of dowry. Petitioner is also not relative of the husband of the complainant, as she is not related either by blood or by marriage relationship. Section 498A reads as such:

“498A. Husband or relative of husband of a woman subjecting her to cruelty.- Whoever, being the husband or the relative of the husband of a woman, subjects such woman to cruelty shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine.”

7. Section 498A of the Indian Penal Code is attracted only against her husband or relative of husband of a woman subjecting her to cruelty.

8. The only allegation in the complaint against the petitioner is that she has had illicit relationship with complainant's husband, in the backdrop of such fact, no ingredient of offence under Section 498A of the Indian Penal Code is made out against the petitioner moreover there is no specific allegation that she assaulted



on any particular day to the complainant, so continuance of the criminal proceeding against the petitioner would be abuse of the process of the court., Hence, the entire criminal proceeding inclusive of the cognizance order dated 28.09.2004 passed by the Sub Divisional Judicial Magistrate, Patna in Complaint Case No. 2364 of 2004 with respect to this petitioner only, is set aside.

9. Accordingly, the application stands allowed.

(Arun Kumar, J)

Sujit/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	07.11.2017
Transmission Date	07.11.2017

