

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.34347 of 2013

Arising Out of PS.Case No. -956 Year- 2001 Thana -PURNIA COMPLAINT CASE District-
PURNIA

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1. Sita Ram Sinha Son Of Late Maharaj Lal Resident Of Maharani Road
New Godown Gaya, P.S. Kotwali, District Gaya.
2. Kiran Sinha @ Kiran Devi Wife Of Sita Sita Ram Sinha Resident Of
Maharani Road New Godown Gaya, P.S. Kotwali, District Gaya.

.... Petitioner/s

Versus

1. The State Of Bihar.
2. Soni Kumari Sinha @ Sonali Wife Of Manish Raj Sinha Daughter Of
Late Lalit Mohan Sinha Mohalla, Dharmasheela Road Amla, Tola, P.S. K.
Hat, District Purnea Presently Residing At Maharani Road New Godown
Gaya P.S. Kotwali, District Gaya.

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Shivendra Prasad

For the Opposite Party/s : Mr. R.B.Rai Raman(App)

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CORAM: HONOURABLE MR. JUSTICE VINOD KUMAR SINHA
ORAL ORDER

4 12-01-2017 This application has been filed for quashing order dated

15.01.2002 passed in Complaint Case No.956 of 2001 by the

Learned Judicial Magistrate Ist Class, Purnea, whereby and

whereunder after finding prima facie a case under Section 498A

of the Indian Penal Code, ordered for issuance of processes.

The prosecution story in short is that the Opposite Party
no.2 filed Complaint Case No.950 of 2001 before the Chief
Judicial Magistrate, Purnea on 3.9.2001 alleging *inter alia* that her
marriage was solemnized with the son of Petitioners on
16.5.1997 but after some time, the accused persons started
torturing on account of dowry such as motorcycle and T.V. so she



filed an informatory petition before the Sub-divisional Magistrate. In the meantime, the accused persons created conspiracy to kill her. The complainant has alleged that her husband has filed a suit for divorce so she has to file the present complaint petition.

The learned Judicial Magistrate 1st Class, Purnea, after inquiry, under Section 202 of the Code of Criminal Procedure found a prima facie case under Section 498A of the Indian Penal Code against the petitioners ordered for issuance of process under Section 204 of the Code of Criminal Procedure, vide order dated 15.01.2002 passed in Complaint Case No.956 of 2001. The aforesaid order issuing processes is under challenge in the present application under Section 482 of the Code of Criminal Procedure, filed by the petitioner.

It is submitted on behalf of the petitioners that from perusal of the old complaint case, it will appear that there is nothing occurred within the jurisdiction of Purnea court rather the complaint case itself shows that the allegations whatever relates to Sasural of Opposite Party No.2 i.e. at Gaya but the aforesaid fact has not been considered by the learned Judicial Magistrate. It has been argued on behalf of the petitioners that from perusal of the whole complaint petition, it will appear that



there is no specific allegation against any of the petitioners rather the allegations are vague and general in nature but in spite of the aforesaid jurisdictional error and not having consistent evidence on the record, the learned Judicial Magistrate has ordered for issuance of process in a very mechanical manner and there is no reasoned order showing as to what allegations attributed against each of the accused persons including the petitioners, as such the aforesaid order is not sustainable in the eye of law and fit to be quashed.

Heard learned A.P.P. as well as the learned counsel for the informant.

It is submitted on behalf of the learned A.P.P. that there is nothing available on the record to show that there is any error apparent available, on the face of the record rather learned court below after perusal of complaint petition and matters available during enquiry, had ordered for issuance of processes, as such there is no merit in the application filed by the petitioner, as such it is fit to be dismissed.

In this case notice was issued against the Opposite Party No.2, and the aforesaid notice was validly served, vide order dated 17.10.2013 of this Hon'ble Court, however, nobody appears on behalf of the Opposite Party No.2, whereas the



present case is of the year, 2013 and the proceeding in connection with this case, in the learned court below was stayed, vide order dated 11.08.2014, as such this Court deems it proper to dispose of this application after hearing the petitioners as well as the learned A.P.P.

Having heard both sides. From perusal of the record, it appears that though in the complaint petition, the place of occurrence has been mentioned at '*Sasural*' and '*Naihar*' and Sasural of the complainant is at Gaya, whereas Naihar was at Purnea but the learned Judicial Magistrate before taking cognizance has not considered the jurisdictional point. Further from perusal of complaint petition, impugned order and other materials available on the record, the allegation appears to be vague. Recently Hon'ble Apex Court in many decision has noticed that now-a-days, it has become tendency especially in matrimonial disputes to involve whole family members of the husband of complainant, as such while taking cognizance/issuance of process, ought to examine as to what are the specific allegation and prima facie case against each of the accused person. In the present case, materials collected during the enquiry are not available on record. However, from perusal of complaint petition, the allegation appears to be general in



nature and impugned order does not show as to what are allegations specially attributed against the petitioners.

As such in view of the above facts, order dated 15.1.2002 passed by Sri B.K. Sinha, Judicial Magistrate Ist Class, Purnea passed in Complaint Case No.956 of 2001 is hereby quashed and the matter is remitted back to the court below to pass the order afresh on the basis of materials available on record and considering the jurisdictional point as well as after examining as to what are the materials available against the petitioners.

Accordingly, this application is allowed.

(Vinod Kumar Sinha, J)

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