

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.52589 of 2013

Arising Out of PS.Case No. -504 Year- 2011 Thana -COMPLAINT CASE District- SUPAUL

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1. Md. Ainul S/O Late Md. Maner Resident Of Village - West Jhirwa, P.S.
Simaraha, District - Araria

2. Bibi Jarina W/O Ainul Resident Of Village - West Jhirwa, P.S.
Simaraha, District - Araria

3. Md. Asad S/O Md. Ainul Resident Of Village - West Jhirwa, P.S.
Simaraha, District - Araria

.... Petitioner/s

Versus

1. The State Of Bihar

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Sunil Kumar Singh
For the Opposite Party/s : Mr. Anant Kumar (App)
For O.P. No. 2 : Mr. Naffishuzoha.

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CORAM: HONOURABLE MR. JUSTICE VINOD KUMAR SINHA
ORAL ORDER

3 19-01-2017 Heard the parties.

The petitioners have filed the present application under Section 482 of the Cr. P.C. for quashing of the order, dated 11.04. 2012, passed in Complaint Case No. 504C of 2011 by which the learned Sub-Divisional Judicial Magistrate, Supaul after finding the *prima facie* case under Section 498A of Indian Penal Code and under Section 3/4 of the Dowry Prohibition Act ordered for issuance of process.



Prosecution story in short is that the complainant-opposite party no. 2, filed a complaint in the Court of Chief Judicial Magistrate, Supaul on 05.07.2011 stating there in that her marriage was solemnized with accused no. 1, (son of the petitioner no. 1) on 06.03.2006 and after marriage she went to her sasural, where for some time, she lived happily but after lapse of some period the husband of the opposite party no. 2, started demanding Rs. 1 lakh from complainant's father as dowry and when the father of the opposite party no. 2 informed this fact to the father of the husband of opposite party no. 2, he also insisted to pay the said demand and on non fulfillment of the said demand, the accused persons including these petitioners started torturing the opposite party no. 2 variously and ultimately ousted her from her matrimonial house and snatched her belongings including the golden chain and other ornaments.

On the basis of the aforesaid Complaint Case No. 504C of 2011, was registered and the same was transferred to learned S.D.J.M., Supaul for enquiry and Trial and the learned S.D.J.M., after enquiry finding *prima facie* case under Section 498A of Indian Penal Code and Section 3/4 of the Dowry Prohibition Act, ordered for issuance of processes against the petitioners vide



order, dated 11.04.2012, which is under challenge in the present application.

It has been submitted on behalf of the petitioners that from perusal of the complaint case, it will appear that no specific allegation has been attributed to these petitioners. The main allegation is against the husband of the opposite party no. 2-complainant, and the petitioners have nothing to do with the affairs of wife and husband. It has further been submitted that petitioner no. 1 is the father-in-law, petitioner no. 2 is the mother-in-law and petitioner no. 3, is the brother-in-law of the opposite party no 2. and they are living separately. It has also been submitted that learned Magistrate while taking cognizance should have examined this fact that no specific allegation has been levelled against these petitioners and without appreciating these facts, he has ordered for issuance of processes and that too in a very mechanical manner, which is not sustainable in the eye of law and deserves to be quashed.

Heard learned counsel for the State and learned counsel appearing on behalf the opposite party no. 2. It has been submitted on behalf of opposite party no. 2 that even on bare perusal of the complaint case, it will appear that the petitioner no. 1 also insisted



for payment of Rs. 1,00,000/- by opposite party no. 2 as demand of dowry and on non fulfillment of the said demand, petitioners have tortured the opposite party no. 2. Further allegation against the petitioners are that they have assaulted the opposite party no. 2 and drove her out of her matrimonial house and petitioner no. 2 has snatched her locket and other ornaments and assaulted by fists and slaps.

Having heard both sides, from perusal of the complaint petitioner as well as materials available on record and also the impugned order, it appears that it is not a case that no specific allegation has been made against the petitioners rather from the materials available on record, it appears that there are allegations against petitioner no. 1 and petitioner no. 2 for torturing the opposite party no. 2 for non fulfillment of the demand of dowry. However from perusal of the records, it appears that no specific allegation has been levelled against the petitioner no. 3, who is the devar of opposite party no. 2 and also learned counsel, appearing on behalf of opposite party no. 2, could not point out any specific overt act against petitioner no. 3.

Accordingly so far as order taking cognizance against petitioner no. 1 and 2 is concerned, I find no illegality in the said



order, dated 11.04. 2012, passed in Complaint Case No. 504C of 2011 by which the learned Sub-Divisional Judicial Magistrate, Supaul, as such the prayer of petitioner no. 1 and 2 for quashing of impugned order is dismissed.

Whereas the order taking cognizance, dated 11.04.2012 passed in Complaint Case No. 504C of 2011 with respect to petitioner no. 3, is hereby quashed.

In view of the above, this application is partly allowed.

(Vinod Kumar Sinha, J)

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