

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.52981 of 2013

Arising Out of PS.Case No. -822 Year- 2012 Thana -EAST CHAMPARAN COMPLAINT District-
EASTCHAMPARAN(MOTIHARI)

=====

1. Premnarayan Mishra S/O Late Ramdev Mishra R/O Mohl- Sahyoug Vihar Colony, Dharampur, P.S.- Sahapur, Distt.- Gorakhpur, U.P.
2. Gangapati Mishra W/O Premnarayan Mishra R/O Mohl- Sahyoug Vihar Colony, Dharampur, P.S.- Sahapur, Distt.- Gorakhpur, U.P.
3. Vikash Mishra @ Vikash S/O Premnarayan Mishra R/O Mohl- Sahyoug Vihar Colony, Dharampur, P.S.- Sahapur, Distt.- Gorakhpur, U.P.

.... Petitioners

Versus

1. The State of Bihar
2. Archana Mishra @ Kumari Archana W/O Vivak Mishra, D/O Manoranjan Mani Tripathi R/O Mohl- Sahyoug Vihar Colony, Dharampur, P.S.- Sahapur, Distt.- Gorakhpur, U.P. at present R/O Mohl- Sri Krishana Nagar, Motihari, P.S.- Motihari Nagar, Distt.- West Champaran, Bihar

.... Opposite Parties

=====

CORAM: HONOURABLE MR. JUSTICE VINOD KUMAR SINHA

ORAL JUDGMENT

Date: 23-01-2017

Petitioners have preferred this application under Section 482 of the Code of Criminal Procedure for quashing the order dated 9.1.2013 passed by the learned Sub-Divisional Judicial Magistrate, Sadar, Motihari in Complaint Case No. 822 of 2012 by which the learned court below finding a prima facie case under Section 498A of the Indian Penal Code against the accused petitioners and ordered for issuance of processes against them.

The prosecution case, as per the complaint petition, in short, is that the accused persons were torturing the opposite party No.2 for demand of dowry of one Alto Car. However, anyhow the



matter was pacified. When the husband of opposite party No.2 came back from Bangkok, accused Nos. 2 to 4 (petitioners) assaulted her and when she complained about the same to her husband, she was abused by him. Thereafter she has complained about the same to her father but after coming to know about this, accused persons snatched her mobile phone. It is also her case that when her maike people came to pacify the matter, accused Nos. 2 to 4 did not agree and insisted on demand of a car. Further case of the complainant is that thereafter she was sent back to her maike and was not kept in her sasural and on several requests she was brought back. It is also her case that when her husband returned from Bangkok his behaviour was also not good. On 17.2.2012 her father-in-law, i.e., petitioner No.1, called her father and started demanding of Rs.7 lacs from him. Thereafter she was assaulted and, as such, the Mohalla people informed the police and the matter was pacified by the police and in that connection the police has got a bond executed by her husband. It is also her case that on 11.3.2012 her husband and “Devar” (petitioner No.3) had taken her to Motihari by a car and she was dropped in a lonely place on the way and thereafter they returned back, whereafter when the complainant came along with her father to Gorakhpur she was not allowed to enter inside the house. Further case of the complainant is that she was also assaulted by the accused persons along with criminals for which she



was treated to Gorakhpur hospital. On the basis of the aforesaid complaint, Complaint Case No.822 of 2012 was instituted which was transferred to the court of SDJM, Sadar, Motihari for enquiry and trial and the SDJM after enquiry finding a prima facie case under Section 498A of the IPC against the accused persons has ordered for issuance of processes against them vide order dated 9.1.2013 passed in the aforesaid complaint case.

The above order passed by the SDJM by which he has ordered for issuance of processes against the petitioners is under challenge by the petitioners in the present application.

It has been submitted on behalf of the petitioners that there is no specific allegation attributed against the petitioners and, as a matter of fact, prior to the present complaint petition, petitioner No.1 has filed a complaint case vide Complaint Case No. 295 of 2012 on 2.3.2012 in the court of ACJM Court No.12, Gorakhpur against opposite party No.2, her husband, father and brothers under Sections 323, 504, 506, 452, 427, 392 and 342 of the IPC and the present case is the counterblast to the aforesaid occurrence, which is false and malicious proceeding against the petitioners.

It has also been submitted on behalf of the petitioners that the Hon'ble Apex Court in the case of Neelu Chopra and another vs. Bharti, reported in (2009) 10 SCC 184 has held that for lodging a



proper complaint mere mention of the sections and the language of those sections are not sufficient, rather particulars of the offence committed by each and every accused and the role played by each and every accused in committing of that offence need to be stated and further held that the order taking cognizance without having the specific allegation attributed against the petitioners is liable to be quashed. It has also been submitted that in the present case also from perusal of the complaint petition it is quite clear that no specific allegation has been attributed against the petitioners and only on the basis of omnibus and vague allegation processes were directed to be issued against them. Further submission advanced by learned counsel for the petitioners is that the present case has been filed by the complainant only to save herself from the complaint case lodged by petitioner No.1 and, as such, the present case is a false and malicious prosecution and the order taking cognizance is not sustainable in the eye of law. Learned counsel has drawn the attention of the court towards the order, as contained in Annexure-2, which is complaint case filed by petitioner No.2 and in this regard it has been submitted that the Hon'ble Apex Court in the case of Suryalakshmi Cotton Mills Limited vs. Rajvir Industries Limited and others, reported in (2008) 13 SCC 678 showing that the document of unimpeachable character can be taken into consideration by the High Court and in the present



case also the aforesaid FIR is a evidence of unimpeachable character and, as such, considering the aforesaid fact and also considering the fact that there is no specific allegation attributed against the petitioner, the impugned order issuing processes is bad in law and it will only be an abuse of process of law if the proceeding is allowed to continue against the petitioner.

Heard learned APP as well as learned counsel for opposite party No.2.

It has been submitted on behalf of them that so far as the allegations are concerned, the complaint petition itself shows that there are specific allegation against all the petitioners and it is not a case where there is no specific allegation attributed against the petitioners and in the complaint petition it has been mentioned that the father-in-law of the complainant, i.e., petitioner No.1, has demanded Rs.7 lacs from the father of the complainant and there is also allegation that in spite of the requests accused persons did not agree to leave the demand. There is allegation against them also that once the police has intervened in the matter and due to that a bond has been executed by the accused persons for keeping her well but they have not done so. Further allegation is that on 11.3.2012 the husband of the complainant as well as the brother of the complainant (petitioner No.3) had taken her on the plea of visiting her to Motihari and on way



near Piprakothi they left her in a lonely place and in spite of her request they had not brought her back. It is also alleged that thereafter on 12.3.2012 she along with her father came to her sasural but she came to know that her husband left for Bangkok and in the night petitioner No.3 along with 5-7 miscreants assaulted her and her father and due to intervention of the mohalla people she was anyhow saved and, as such, the present case is not a case where there is no specific allegation attributed against the petitioners, rather the allegations are serious in nature. It has further been submitted that only because of the fact that the one complaint case has been filed against the complainant and her father it is not open to enquire the said case. Hence, there is no illegality in the order issuing processes.

Having heard learned counsel for both sides and after perusal of the complaint petition as well as the impugned order and the other materials on the record it appears that there are allegations against the petitioners, more specifically against petitioners Nos. 1 and 3 and all the allegations relate to the in-laws house and in such a situation it cannot be said that the petitioners have no knowledge in the same and they have no hands, rather the allegations appear to be specific and serious and there is allegation of demanding dowry of Rs.7 lakh against petitioner No.1 and there is allegation of assault against petitioner No.3. Petitioner No.2 is mother-in-law of the



complainant and allegations are against her and the above allegations against all the petitioners are serious, as such the judgment of the Supreme Court cited by learned counsel for the petitioners in the case of Neelu Chopra (supra) is not applicable to the facts and circumstances of the present case.

So far as the submission of the petitioners that it is a false and malicious prosecution as petitioner No.1 had filed a complaint case prior to the present one is concerned and further submission that the aforesaid complaint petition is an unimpeachable document is concerned, the authenticity of the allegation made in the FIR cannot be tested at this stage as such, on the basis of the aforesaid complaint petition the above consistent evidence which I have discussed above,, cannot be brushed aside.

Considering the observations made above, I am of the opinion that there is nothing illegal in the impugned order issuing processes against the petitioners nor there is any error apparent on the face of the records.

Accordingly, this application is dismissed.

(Vinod Kumar Sinha, J)

spal/-

AFR/NAFR	
CAV DATE	



Uploading Date	27.01.2017
Transmission Date	27.01.2017

