

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.48783 of 2013

Arising Out of PS.Case No. -3025 Year- 0 Thana -PATNA COMPLAINT CASE District- PATNA

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1. Prakash Goswami son of Sri Shambhu Goswami
2. Shambhu Goswami son of Late Mahabir Goswami
3. Babi Devi wife of Sri Shambhu Goswami,
All residents of village- Mahaugupur, P.S.- Janipur, District- Patna
..... Petitioner/s

Versus

1. The State of Bihar
2. Jyoti Devi daughter of Ram Ishwar Goswami, resident of Dhelwan, P.S.- Ram
Krishna Nagar, District- Patna
..... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Sandeep Kumar, Advocate
: Mr. Alok Kumar Shahi, Advocate
For the Opposite Party/s : Mr. Rakesh Kumar, Advocate
For the State : Mr. Navin Kumar Pandey, A.P.P.

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 21-06-2017

Heard learned counsel for the petitioners and learned
counsel for the State.

2. This application under Section 482 of the Code of
Criminal Procedure (for short 'CrPC') has been filed for quashing of
the order dated 16.02.2013 passed by the learned Sub Divisional
Judicial Magistrate, Patna in Complaint Case No.3025(C) of 2012 by
which the petitioners have been summoned in exercise of powers
under Section 204 of the CrPC to face prosecution for the offences
punishable under Section 498A of the Indian Penal Code and Section
4 of the Dowry Prohibition Act.

3. In short, the case of the complainant is that she was



married to one Vikash Goswami on 25.05.2011. She stayed in her matrimonial home for 3-4 months happily but thereafter the accused persons started torturing her for TV and motorcycle and she was ousted from her matrimonial home on 25.10.2012.

4. The complainant was examined on solemn affirmation under Section 200 of the CrPC. In support of the allegations made in the complaint three witnesses were examined in course of enquiry conducted under Section 202 of the CrPC whereafter the petitioners and the husband of the complainant Vikash Goswami were summoned to face trial.

5. It is submitted by Mr. Sandeep Kumar, learned counsel for the petitioners that the allegations made in the complaint are vague. It is not stated that when the accused persons assaulted or abused the complainant or demanded dowry. He submitted that the witnesses examined in course of enquiry are also not consistent and it would be an abuse of the process of the court, if the petitioners are asked to face rigors of trial on the basis of such a false, concocted and malicious allegations.

6. Mr. Sandeep Kumar, learned counsel for the petitioners has placed his reliance on the ratio laid down by the Supreme Court in **Neelu Chopra and another vs. Bharti [(2009) 10 SCC 184]** in support of his contentions that in absence of particulars of the offence



committed by each and every accused and the role played by them in commission of that offence, the summary order so far as the petitioners are concerned is bad in law.

7. Per contra, Mr. Rakesh Kumar, learned counsel for the informant submitted that a strong prima facie case is made out against the petitioners for the offence punishable under Section 498A of the Indian Penal Code and Section 4 of the Dowry Prohibition Act. He submitted that at the stage of taking cognizance of the offence and summoning of accused persons only a prima facie case is to be seen by the Magistrate. If a prima facie case is made out, the order summoning an accused cannot be held to be bad merely because the minutest details of the commission of the offence is not given in the complaint or the statement of the complainant and the inquiry witnesses.

8. I have heard respective counsel for the parties and perused the record.

9. On perusal of the allegations made in the complaint, the statement of the complainant made on oath and the statements of the enquiry witnesses, which have been produced by the learned counsel for the petitioners in course of argument and have been taken on record, I find that there is complete lack of material as against petitioner no.1 Prakash Goswami. An absolutely vague statement has



been made against him that he also participated in commission of the offence. I also find that enquiry witness nos. 1 and 3, namely, Ram Ishwar Goswami and Lal Mohan Goswami have not uttered a word in their respective statement against petitioner no.1 Prakash Goswami, the brother-in-law of the complainant. In that view of the matter, I find substance in the submission of learned counsel for the petitioners that so far as the case of the petitioner no.1 is concerned, it is squarely covered by the decision of the Supreme Court in the case of **Neelu Chopra and another** (supra) wherein the Supreme Court has observed:

“In order to lodge a proper complaint, mere mention of the sections and the language of those sections is not the be all and end all of the matter. What is required to be brought to the notice of the court is the particulars of the offence committed by each and every accused and the role played by each and every accused in committing of that offence.”

10. Since the allegations made in the complaint against petitioner no.1 are absolutely vague and even in course of enquiry the witnesses have not attributed any specific imputation against him, in the opinion of this court allowing the prosecution to continue against him would be an abuse of the process of the court. So far as the



petitioners no.2 and 3 are concerned, there are imputations against them in the complaint as also in the statement of the complainant and the witnesses examined in course of enquiry. In that view of the matter, I am of the opinion that there is no illegality in the order passed by the learned Magistrate whereby they have been summoned to face trial.

11. Accordingly, the impugned order dated 16.02.2013 passed by the learned Sub Divisional Judicial Magistrate, Patna in Complaint Case No.3025(C) of 2012 so far as petitioner no.1 Prakash Goswami is concerned, is quashed. The learned Magistrate, however, shall proceed with the trial of the case in respect of other accused persons.

12. It is made clear that the observations made hereinabove shall not prejudice the court in any manner at the subsequent stage of trial.

(Ashwani Kumar Singh, J)

Md.S./-

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