

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.50285 of 2013

Arising Out of PS.Case No. -320 Year- 2011 Thana -ROHTAS COMPLAINT CASE District-
SASARAM (ROHTAS)

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1. Kasim Akhtar Son Of Late Shah Mohammad Isha Resident Of Village + P.O. Aurangabad Sareya P.S. Amjhor, District - Rohtas
 2. Rafique Shah Son Of Late Nasruddin Shah Resident Of Village + P.O. Aurangabad Sareya P.S. Amjhor, District - Rohtas
 3. Jahida Khatoon Wife Of Rafique Shah Resident Of Village + P.O. Aurangabad Sareya P.S. Amjhor, District - Rohtas
 4. Md. Ilyas Shah @ Ilyas Shah Son Of Late Rajjak Shah Resident Of Village + P.O. Aurangabad Sareya P.S. Amjhor, District - Rohtas
 5. Shajda Khatoon @ Shahada Wife Of Ilyas Shah Resident Of Village + P.O. Aurangabad Sareya P.S. Amjhor, District - Rohtas
 6. Jalil Shah Son Of Late Jamir Shah Resident Of Village + P.O. Aurangabad Sareya P.S. Amjhor, District - Rohtas
 7. Nasreen Khatoon Wife Of Jalil Shah Resident Of Village + P.O. Aurangabad Sareya P.S. Amjhor, District - Rohtas

.... Petitioners

Versus

1. The State Of Bihar
2. Shahnaj Khatoon Wife Of Kasim Akhtar, Daughter Of Late Moharam Shah Resident Of Village - Sihuli Dargah, P.S. Rafiganj, District - Aurangabad

.... Opposite Parties

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Appearance :

For the Petitioners : Mr. Ashok Kumar Mishra

For the Opposite Parties : Mr. J.N.Thakur (App)

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CORAM: HONOURABLE MR. JUSTICE JITENDRA MOHAN SHARMA
ORAL ORDER

6 11-07-2017 The instant Criminal Miscellaneous has been filed for quashing the order dated 18.05.2012 passed in Complaint Case No.C 320 of 2011/ Trial No. 351 of 2013 by the then learned S.D.J.M. Dehri, whereby and whereunder, after finding prima-facie case to be made out against the petitioners under sections 504, 323, 341, 506 and 384 of the I.P.C. issue summons against



them.

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

Inspite of service of notice the opposite party no.2 has not appeared.

The Complaint Case No. 320 C of 2011 was filed by the opposite party no.2 alleging that she was married with petitioner no.1 about 27 years ago and out of the wedlock there are eight children out of which three are majors and five are minors. Three major sons are residing separately along with their family, whereas, five minor children are residing with the complainant. The accused persons are torturing the complainant. They are demanding dowry of Rs. 1,00,000/- and finally ousted her from the in-laws house along with minor children. The complainant is ready to reside with petitioner no.1 but the accused persons are not ready for the same.

The complainant was examined on the solemn affirmation and three enquiry witnesses, namely, Mohammad Alim Khan, Parsuram Yadav and Rashid Ekbal were examined and thereafter considering the statements of the enquiry witnesses and the complainant the impugned order has been passed.

On behalf of the petitioners it is submitted that the



petitioners have been falsely and maliciously implicated in this case and they are made victim of the circumstances, no offence under section 384 of the I.P.C. is made out. The learned court below has not found prima-facie offence under section 498 A of the I.P.C. The petitioner no.1 is the husband, whereas, petitioner nos. 2 to 7 are Nanad and Nandoshi of the complainant. The demand of dowry after 27 years of marriage having eight children appears not probable and reliable. The petitioner nos. 2 to 7 are residing at Delhi, Aurangabad and Kolkatta far away from the place of occurrence. They have got no concern with the family affairs of the complainant and petitioner no.1. However, the petitioner no.1 is ready to keep the complainant with full honour and dignity. No offence as alleged is made out and as such the impugned order appears fit to be quashed.

The learned A.P.P, on the other hand, submits that against petitioner no.1 prima-facie offence as alleged is made out.

Having considered the submissions urged at the Bar, going through the record and noticing that the learned S.D.J.M. after considering the statement of the complainant on the solemn affirmation and the statements of three enquiry witnesses has found prima-facie offence to be made out, but it reveals that petitioner nos. 2 to 7 are Nanad and Nandoshi, they are living



separately since long after their marriage at different places and there is no sufficient material against them to proceed further, no specific allegations have been attributed against them and as such in my opinion the impugned order passed against petitioner nos. 2 to 7 appears not tenable and is fit to be quashed. Sofar, as against petitioner no.1 is concerned, he is the husband and against him there is allegation for assaulting and torturing her, but against him also no offence under section 384 of the I.P.C. is made out.

In the result, the impugned order with respect to petitioner nos. 2 to 7 is hereby quashed and against petitioner no.1 the offence under section 384 of the I.P.C. is not made out and the same also is hereby quashed.

With these observations this Criminal Miscellaneous stands allowed in part.

(Jitendra Mohan Sharma, J)

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