

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.28818 of 2013

Arising Out of PS.Case No. -1964 Year- 2010 Thana -SAMASTIPUR COMPLAINT CASE
District- SAMASTIPUR

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1. Uma Shankar Das S/O Late Chit Ranjan Das Resident Of Village- Bhuindhara Adarsh Nagar, P.S.- Moffasil, District- Samastipur
 2. Manoj Kumar Das S/O Uma Shankar Das Resident Of Village- Bhuindhara Adarsh Nagar, P.S.- Moffasil, District- Samastipur
 3. Arun Kumar Das S/O Uma Shankar Das Resident Of Village- Bhuindhara Adarsh Nagar, P.S.- Moffasil, District- Samastipur

.... Petitioner/s

Versus

1. The State Of Bihar
2. Most. Lalita Devi W/O Late Praveen Kumar Resident Of Village- Thahara Gopalpur, P.S.- Pusa, District- Samastipur

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Rajiv Ranjan Singh

Mr. Sunil Kumar Singh

For the Opposite Party/s : Mr. Humayu Ahmad Khan, APP

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CORAM: HONOURABLE MR. JUSTICE SANJAY KUMAR

ORAL JUDGMENT

Date: 12-09-2017

This application under Section 482 of the Code of Criminal Procedure has been filed to quash the order dated 10.05.2011 passed by the learned Sub Divisional Judicial Magistrate, Samastipur in Trial No. 2113 of 2011 arising out of Complaint Case No. 1964 of 2010 whereby and whereunder the learned Magistrate finding prima facie case for the offence under Sections 498-A and 323 of the Indian Penal Code, summoned the petitioners.

2. Heard both sides and perused the record.

3. The complainant (Opposite Party No. 2) filed a



complaint case on the file of the learned C.J.M, Samastipur alleging therein that her husband died in the year 2006. After the death of her husband, she along with her three minor daughters is residing in the house of her husband. The petitioner No. 1 is the elder brother of her husband and the petitioner Nos. 2 and 3 are the sons of the petitioner No. 1. On the date of occurrence, these petitioners entered into her room and they abused and assaulted the complainant and her children. She raised alarm whereupon, the witnesses came and thereafter, the accused persons left the place. She has further alleged that the accused persons used to hurl threat and demand money. The accused persons sold the ancestral land and settled at village Bhuindhara. The learned Magistrate, after enquiry found prima facie case for the offence under Sections 498-A and 323 of the Indian Penal Code and summoned the petitioners.

4. The learned counsel for the petitioners submits that the petitioners are co-sharer of the husband of the complainant. The allegation of torture in the complaint petition is omnibus and no offence under Section 498-A is made out. The dispute between the parties relates to landed property left by their father. The father of the petitioner No. 1 died leaving behind six sons. After the death of husband, the Opposite Party No. 2 is creating problem in the family affair for partition of landed property. One of the full brother of this



petitioner No. 1, namely, Ramesh Kumar has filed a Partition Suit No. 22 of 2011 against these petitioners and the Opposite Party No. 2, which is pending for disposal. The petitioners reside at Village Bhuindhara, Adarsh Nagar, P.S. Muffasil, District-Samastipur whereas the brother of these petitioners and the Opposite Party No. 2 reside at the village Thahara Gopalpur P.S.-Pusa District-Samastipur. The allegation of torture is omnibus and no offence against any of the petitioners is made out. The learned Magistrate has passed the impugned order without applying judicial mind and so, the same is fit to be quashed.

5. The learned APP for the State opposed the submission.

6. On perusal of complaint petition, I find that the petitioners are residing at different place. This fact finds support from the complaint petition itself. The complainant in last paragraph of complaint petition has stated that the petitioners have sold the ancestral land and have settled in Samastipur Town at village Bhuindhara, Adarsh Nagar in Samastipur. The Opposite Party No. 2 and other co-sharer are residing at village Thahara Gopalpur P.S.-Pusa District-Samastipur. A partition suit is also pending between the parties. The allegation of torture is omnibus. It has been simply alleged that on the date of occurrence, they assaulted the complainant, which appears improbable in view of the fact that the petitioners are



residing at different place. In view of the dispute between the parties for partition of landed property for which a Partition Suit No. 22 of 2011 is pending between them, the criminal prosecution of these petitioners appears to be an abuse of process of Court.

7. In the facts and circumstances stated above, the order dated 10.05.2011 taking cognizance under Sections 498-A and 323 of the Indian Penal Code and the criminal prosecution of these petitioners is quashed.

8. This application is allowed. The Lower Court Records (L.C.R.) as called for be returned.

(Sanjay Kumar, J)

ajay gupta/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	15.09.2017
Transmission Date	15.09.2017

