

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.46668 of 2013

Arising Out of Complaint.Case No. -825 Year- 2012 District- MADHUBANI

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1. Om Prakash Jha, Son Of Late Ram Lakhan Jha
2. Doli Jha @ Dauli Jha, W/O Om Prakash Jha
Both Resident Of Village- Bhit Bhagwanpur, P.S. Madhepur, District- Madhubani,
Presently Residing At Mohalla- Kalibari Near I.C.I.C.I. Bank, Village & P.O.
Karnajara, P.S. Raiganj, District- North Dinajpur (West Bengal)

.... Petitioner/s

Versus

1. The State Of Bihar
2. Smt. Nirmala Jha, W/O Sri Om Prakash Jha, Resident Of Village- Bhit
Bhagwanpur, P.S. Madhepur, District- Madhubani.

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Anwar Karim, Adv.

For the Opposite Party no.2 : Mr. Nawal Kishore Prasad, Adv.

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD

CAV JUDGMENT

Date: 09-08-2017

Learned counsel for the petitioners and learned counsel
for the opposite party no.2 were heard on 03.08.2017. No one
appeared for the State.

2. At the time of hearing of this application, learned
counsel for the petitioners informed this Court that the Accused No.1-
petitioner no.1 died during the pendency of the present application
and, therefore, the learned counsel has pressed this application only in
respect to the petitioner no.2.

3. The petitioner no.2 is praying for quashing of the
order dated 09.05.2013 passed by learned Sub-Divisional Judicial



Magistrate (in short 'S.D.J.M.'), Jhanjharpur in complaint case bearing C.R.No.825 of 2012 by which the learned Magistrate has taken cognizance of the offences under Section 498(A), 380 and 494 of the Indian Penal Code and issued summon to the petitioners for appearance.

4. The petitioner no.2 is the second wife of one Om Prakash Jha (petitioner no.1, since deceased). The opposite party no.2, who filed the present complaint giving rise to Complaint Case No.825 of 2012 in the court of learned Additional Chief Judicial Magistrate, Jhanjharpur, alleged that she was married to accused no.1 (the deceased petitioner no.1) in the year 1984 in accordance with Hindu Rights and Customs. After her marriage, she started living in her Sasural as her husband was posted at Raiganj in the State of West Bengal. It is further alleged that the complainant was living with her husband and had given birth to two sons namely Ajay Kumar Jha and Ajit Kumar Jha and also one daughter Ritu Kumari.

5. Further allegations are that all of a sudden in the year 2003, the complainant found change in the nature of accused no.1 as he was getting angry on minor things and sometimes he was also scolding the complainant in anger. This fact was allegedly brought to the notice of the mother-in-law. It is alleged that on 15th August 2003, the husband of the complainant on the pretext of ill-



health of his mother brought the complainant and her children to village Bhit Bhagwanpur and after staying there for sometime he left the village saying that he would come back after Durga Puja to take the complainant to Raiganj. It is alleged that when the accused no.1 did not come back, the complainant along with her brother reached Raiganj and there she found an unknown lady living with her husband. It is alleged that accused no.1 abused the complainant and told in anger that he had solemnized 2nd marriage and he would not keep the complainant with him. It is alleged that the neighbours also assembled on hearing Hulla, but the complainant, her children and her brother were ousted from the house. The complainant came back to her Sasural in village Bhit Bhagwanpur and informed this to her mother-in-law, but no effect could be found on her husband. All of a sudden, it is alleged that, in the year 2004 the mother-in-law of the complainant fell ill, this was informed to her husband and both accused visited the village Bhit Bhagwanpur and took away her mother-in-law and the complainant to Raiganj where her mother-in-law was treated and got well.

6. It is further alleged that at Raiganj it was suggested to the accused no.1 to send half of his salary to the complainant and the name of the complainant should be entered in the records of the Government for getting all facilities, but the accused no.1 did not



agree to the suggestion given to him by his mother. Thereafter, the mother-in-law of the complainant executed a Will dated 24.09.2004 in favour of her both grandsons namely Ajay Kumar Jha and Ajit Kumar Jha. The complainant returned with her children to village Bhit Bhagwanpur. It is further alleged that the mother-in-law of the complainant was getting pension and that was the source of livelihood for the complainant and her children, but in the year 2009 the mother-in-law of the complainant died and the complainant had to face a lot of trouble in taking care of her children. The accused nos. 1 and 2 both visited the village, but refused to take care of the maintenance of the complainant and her children and were indulged in cruelty by beating her. The complainant allegedly remained silent and went on bearing with the torture. It is alleged that the accused persons were visiting the village time to time and were torturing the complainant. On 14.08.2012, the accused persons came to village by Car and asked the complainant to hand over the land documents and ornaments kept by mother-in-law of the complainant and on denial by the complainant she was abused, the key was forcibly snatched from her and they took away the gold and silver ornaments and Rs.5,00,000/- from the Almirah. It is further alleged that during the night the complainant was locked in the house and the accused persons went away by car. It is also alleged that the accused persons threatened the



complainant that on filing any case they will get her killed. Thus, the whole case of the complainant is that she was tortured and the accused no.1 solemnized the second marriage during the lifetime of the first wife and also took away the ornaments which the complainant had got from her mother-in-law and, therefore, the present case.

7. The complainant was examined on oath where she has admitted that there was a dispute between the complainant and her husband since the year 2003. She further replied in an answer to a Court's question that information of the alleged occurrence was not given to the police station. She admitted that village is in the Panchayat, but the alleged occurrence was not informed to the Mukhiya and Sarpanch of the Panchayat. It is also not informed to the Chowkidar. She further stated that there is no documentary evidence of marriage of Doli Jha. The complaint was supported by one Gopal Thakur, Ajay Kumar Jha and Prabhakar Jha. There are other witnesses who have supported the case of the complainant that her husband had married, but there was no proof of the marriage.

8. The learned SDJM, Jhanjharpur vide his order dated 09.05.2013, which is impugned in the present application, took cognizance of the offences under Sections 498(A), 380 and 494 of the I.P.C. and decided to issue summons against the accused persons noted in the complaint petition.



9. Learned counsel for the petitioner no.2 submits that the present complaint has been filed only to pressurize the petitioner, firstly, not to raise objection against the alleged “Deed of Will” said to have been executed by the deceased mother-in-law of the complainant-opposite party no.2 and secondly, to compel the husband (since deceased) to execute a registered deed transferring all of his landed properties and the house situated in village Bhit Bhagwanpur in favour of the complainant and her two sons only. Learned counsel submits that it is a mala fide complaint filed on the basis of false, concocted and cooked-up story setting out the alleged date of occurrence of visiting the village by car and then taking away the gold and silver ornaments and also a sum of Rs.5,00,000/- and allegation of torture are all baseless story. It is submitted that, in fact, the deceased husband (petitioner no.1) was under training from 03.07.2012 to 03.08.2012 in Service Computer Training for the officials of Directorate of Commercial Taxes, West Bengal and since 06.08.2012 to 24.08.2012 they had gone for another training course of ACTO held at Directorate of Commercial Taxes, Beliaghata Building (HRD Cell, 3rd Building 7th Floor) conducted by the HRD Cell of the Directorate of Commercial Taxes, West Bengal. In support of his contention the learned counsel has relied upon the Railway Journey Reservation Ticket of the petitioner no.1 dated 28.07.2012 vide PNR



No.660-4327655 from Raiganj to Kolkata by Train No.13146 Radhikapur Express, certificate of 1st training course of petitioner no.1 held between 30.07.2012 to 03.08.2012 granted by the Director, Administrative Training Institute, Government of West Bengal, another training certificate of the petitioner no.1 which training was attended between 6th August, 2012 to 24th August, 2012 for the training course of ACTO and after completion, the training certificate was issued by the Additional Commissioner, Commercial Taxes, HRD Cell, West Bengal and lastly he has relied upon the return railway journey reservation ticket of the petitioner no.1 dated 24.08.2012 vide PNR No.660-5911556, train no.13145 from Kolkata to Raiganj by which after completion of training the petitioner no.1 came back to Raiganj from Kolkata. These documents have been annexed as Annexure-2, 3, 4 and 5 respectively. Learned counsel for the petitioner no.2 has further relied upon some money order receipts, as contained in Annexure-6 series, to show that the petitioner no.1 was always taking care of maintenance of the complainant. It is the case of the petitioner no.1 that he got second marriage with the petitioner no.2 in the year 1993 with consent of the complainant which is well within her knowledge and from his second wife in the year 1996 he got one daughter and in the year 1998 one son, whereas from the first wife the petitioner no.1 had two sons and one daughter.



Out of them one son and daughter have already been married and one son has completed his graduation and recently joined a service. It is further stated that this son has been living since beginning with the petitioners at Raiganj and as such the entire prosecution story is false, concocted and baseless.

10. On the other hand, learned counsel for the complainant-opposite party no.2 has opposed the application and submitted that in the facts and circumstances of the case learned SDJM, Jhanjharpur has found a prima facie case against the petitioner therefore, this Court should not interfere with the order taking cognizance and issuance of summons.

11. In the present case, the complainant-opposite party no.2 was noticed vide order dated 19.11.2013 and she appeared through vakalatnama on 19.02.2014. However, the complainant-opposite party no.2 has not filed any affidavit disputing the genuineness and correctness of the documents such as training certificates, railway journey tickets and the receipts of money orders which have been enclosed with the present application to support the contention that the allegations brought by the complainant-opposite party no.2, at this stage, setting out the date of occurrence on 14.08.2012 is out and out false story with sole intention to initiate a mala fide prosecution for some oblique reason. Since the genuineness



of the documents brought on record by the applicants/petitioners are not in dispute, this Court would rely upon the judgments of the Hon'ble Apex Court, one of them being in the case of **Rajiv Thapar & Ors. Vs. Madan Lal Kapoor reported in AIR 2013 SC (Cri) 659**. Paragraph 23 of the said judgment reads as under:-

“Based on the factors canvassed in the foregoing paragraphs, we would delineate the following steps to determine the veracity of a prayer for quashing, raised by an accused by invoking the power vested in the High Court under Section 482 of the Cr.P.C.:-

(i) Step one, whether the material relied upon by the accused is sound, reasonable, and indubitable, i.e., the material is of sterling and impeccable quality?

(ii) Step two, whether the material relied upon by the accused, would rule out the assertions contained in the charges leveled against the accused, i.e., the material is sufficient to reject and overrule the factual assertions contained in the complaint, i.e., the material is such, as would persuade a reasonable person to dismiss and condemn the factual basis of the accusations as false?

(iii) Step three, whether the material relied upon by the accused, has not been refuted by the prosecution/complainant; and/or the material is such, that it cannot be justifiably refuted by the prosecution/complainant?

(iv) Step four, whether proceeding with the trial would result in an abuse of process of the court, and



would not serve the ends of justice?

If the answer to all the steps is in the affirmative, judicial conscience of the High Court should persuade it to quash such criminal proceedings, in exercise of power vested in it under Section 482 of the Cr.P.C. Such exercise of power, besides doing justice to the accused, would save precious court time, which would otherwise be wasted in holding such a trial (as well as, proceedings arising therefrom) specially when, it is clear that the same would not conclude in the conviction of the accused.”

12. This Court finds that the documents enclosed are uncontroverted and in absence of any dispute the Court has reasons to believe that those are worth reliable.

13. A perusal of the complaint petition itself shows that according to the complainant she found her husband living with the petitioner no.2 when she visited Raiganj in the year 2003, her husband told her that he had married with the petitioner no.2 and thereafter the complainant did not lodge any complaint. Complainant admits that during treatment of her mother-in-law at Raiganj she had also gone and stayed. No allegation of torture is made during this period. Admittedly, the complainant was living with her mother-in-law in village Bhit Bhagwanpur where she was depending upon the pension amount which her mother-in-law was getting. The last part of the



allegation that on 14.08.2012 the accused persons came by car, entered into the house and after abusing and beating the complainant took away gold and silver ornaments and Rs.5,00,000/- in cash, in the opinion of the Court, stands falsified on the face of the documentary evidences which are uncontroverted by the opposite party no.2. On the alleged date dated 14.08.2012 the petitioner no.1 was engaged in training which is evident from the certificate granted by the Additional Commissioner, Commercial Taxes Human Resource Development Cell, Beliaghat Road, Kolkata which certifies as under:-

“ Certified that SRI OM PRAKASH JHA, ACTO // RG CHARGE, has successfully completed the Induction Training Course of ACTO held at Directorate of Commercial Taxes, Beliaghata Building (HRD Cell, 3rd Building, 7th Floor), conducted by the HRD Cell of the Directorate of Commercial Taxes, West Bengal from 6th August, 2012 to 24th August, 2012.”

14. Further, in answer to the Court's query during the solemn affirmation complainant admits that this occurrence was not reported to the Mukhiya and Sarpanch of her Panchayat, further she admits that the alleged occurrence was not informed even to the chowkidar. These are some overwhelming circumstances which strengthen the submission of the petitioner no.2 that the allegations



are not true.

15. A reading of the complaint petition itself suggests that issue of second marriage had settled down between the parties and the receipts showing remission of money (Annexure-6 series) would show that the husband of the opposite party no.2 was sending some money sometimes in her name and sometimes in the name of her sons.

16. Section 498(A) IPC reads as under:-

498A. Husband or relative of husband of a woman subjecting her to cruelty.--Whoever, being the husband or the relative of the husband of a woman, subjects such woman to cruelty shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine.

Explanation.--For the purposes of this section, "cruelty" means-

(a) any wilful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman; or

(b) harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand.]



17. However, Section 380 and Section 494 are also quoted herein under for easy reference:-

380. Theft in dwelling house, etc.--Whoever commits theft in any building, tent or vessel, which building, tent or vessel is used as a human dwelling, or used for the custody of property, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

494. Marrying again during lifetime of husband or wife.--Whoever, having a husband or wife living, marries in any case in which such marriage is void by reason of its taking place during the life of such husband or wife, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Exception.--This section does not extend to any person whose marriage with such husband or wife has been declared void by a Court of competent jurisdiction, nor to any person who contracts a marriage during the life of a former husband or wife, if such husband or wife, at the time of the subsequent marriage, shall have been continually absent from such person for the space of seven years, and shall not have been heard of by such person as being alive within that time provided the person contracting such subsequent marriage shall, before such marriage takes place, inform the person with whom such marriage is contracted of the real state of facts so far as the same



are within his or her knowledge.

18. So far as Section 494 IPC is concerned it would not be attracted against the petitioner no.2 because she has not re-married despite having her husband. The allegation of bigamy under Section 494 IPC would at best be attracted against the deceased husband of the complainant. However, the husband of complainant-opposite party no.2 has died. The allegations under Section 498(A) and Section 380 IPC would equally be not made out against the petitioner no.2 on vague allegations as there is no specific allegation of committing any overt act of torture by the petitioner no.2 or even of committing theft. The story of entering into the village house on 14.08.2012 and taking away the gold and silver ornaments and Rs.5,00,000/- are not believable for two reasons, firstly, because of uncontroverted documentary evidences brought by the petitioners in the present case to show that on the alleged date of occurrence the petitioner no.1 was under going the training programme and secondly, for the reason that complainant herself states in the petition that after death of her mother-in-law in the year 2009 she was facing very difficult time in maintaining herself and her children and she was somehow carrying out her responsibilities, if it was the position, then nobody can believe that she was having gold and silver ornaments and



Rs.5,00,000/- in cash kept in the Almirah which were allegedly taken away by the accused persons. The allegations are highly improbable and unbelievable in the facts of the present case. In the complaint petition, the complainant has stated about execution of a Will by her mother-in-law in favour of her two sons and, therefore, the submission of petitioner no.2 is that the present complaint was filed only to put pressure upon the accused persons not to raise any objection against the executed Will and then to compel the petitioner no.1 (since deceased) to execute a transfer deed in favour of the sons of the opposite party no.2 with respect to village properties. From the tone and tenor of the story alleged in the complaint petition this Court is of the opinion that the case as setout by the complainant-opposite party no.2 is not believable and the same is highly improbable on the face of the positive assertions of the petitioners, not denied by opposite party no.2 and the uncontroverted documentary evidences brought by the petitioners. It cannot be believed that an occurrence as alleged would not even be brought to the notice of the chowkidar of the village or to the Panchayat. The facts mentioned in the complaint themselves suggest that the issue of 2nd marriage by her husband had settled down; however due to dispute over the inheritance of properties led to filing of the present complaint setting out a story with a date (14.08.2012).



19. For the reasons mentioned above, in the opinion of this Court, the complaint is mala fide complaint and hence it is covered under one of the illustrations in the judgment rendered by the Hon'ble Apex Court in the case of **State of Haryana & Ors. Vs. Bhajan Lal reported in 1992 Supp. (1) SCC 335.**

20. The order issuing process against petitioner no.2 has been passed in a routine manner. Thus, the order taking cognizance and issuance of summons dated 09.05.2013 passed by the learned SDJM, Jhanjharpur in complaint case bearing C.R.No.825 of 2012, as against petitioner no.2, is hereby quashed.

21. The application stands allowed.

(Rajeev Ranjan Prasad, J)

Arvind/-

AFR/NAFR	AFR
CAV DATE	03.08.2017
Uploading Date	10.08.2017
Transmission Date	10.08.2017

