

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.10108 of 2014

Arising Out of PS.Case No. -776 Year- 2012 Thana -SIWAN COMPLAINT CASE District- SIWAN

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1. Md. Modakkir Hashmi
 2. Md. Mozammil Hashmi
 3. Md. Murshid Hashmi
 4. Md. Modassir Hashmi All Are sons of Late Md. Kamil Hashmi
 5. Farhat Zabin Wife of Md/ Modassir Hashmi
 6. Anisha Khatoon Wife of Md. Murshid Hashmi
 7. Tarana Khatton Wife of Md. Nayer Azam
 8. Darkasha Firdoushi @ Rani Wife of Md. Modakkir Hashmi All Resident of Village- Manjharia, P.O.- Bakshana, Via Mahua, P.S. Mahua (O.P./ Bakshana), District- Vaishali

.... Petitioner/s

Versus

1. The State of Bihar
2. Afroz Khatoon, Wife of Md. Modakkir Hashmi, D/o Ilmul Hoda, Resident of Village- Manjharia, P.O.- Bakshana, Via Mahua, P.S. Mahua (O.P. Bakshana), Distt- Vaishali at Present Resident At Vill + P.O.- Hathoda, P.S. Hussainganj, District- Siwan

.... Opposite Party/s

with

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Criminal Revision No. 643 of 2013

Arising Out of PS.Case No. -776 Year- 2012 District- SIWAN

- =====
1. Md. Modakhir Hashmi
 2. Majammil Hashmi
 3. Murshid Hashmi
 4. Modasir Hashmi
All sons of late Md. Kamil Hashmi
 5. Farhat Zabin W/o Modasir Hashmi
 6. Anisha Khatoon, W/o Murshid Hashmi
 7. Tarana Khatoon W/o Nayer Azam
 8. Darkasha Firdoushi @ Rani W/o Md. Modakhir Hasmi
All are R/o Village-Manjharia P.O.-Bakshama via Mahua, P.S. Mahua (O.P. Bakshama) Distt-Vaishali

.... Petitioner/s

Versus

1. State of Bihar
2. Afroz Khatoon, W/o Md. Modaskir Hashmi, R/o Village-Manjharia, P.O. Bakshama via Mahua, P.S. Mahua (O.P. Baksham) Dist-Vaishali at present resides at village and P.O.-Hathoda, P.S. Hussainganj, District-Siwan.

.... Respondent/s

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Appearance :



(In Cr.Misc. No.10108 of 2014)

For the Petitioner/s : Mr. Rajeev Ranjan
For the Opposite Party No. 2 : Mr. Javed Aslam
For the State : Mr. Humayu Ahmad Khan

(In CR. REV. No.643 of 2013)

For the Petitioner/s : Mr. Rajeev Ranjan
For the Opposite Party No. 2 : Mr. Javed Aslam
For the State : Mr. Humayu Ahmad Khan

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CORAM: HONOURABLE MR. JUSTICE SANJAY KUMAR

ORAL JUDGMENT

Date: 18-07-2017

Heard both sides.

2. The petitioners of Cr. Misc. no. of 10108 of 2014 and the Cr. Revision no. 643 of 2013 are the same and the matter relates to Complaint Case no. C776 of 2012 under Section 498-A of the I.P.C. In Cr. Misc. no. 10108 of 2014, the petitioners seek quashing of the order dated 23.05.2013 passed by Sri Abhishek Ranjan, Judicial Magistrate, 1st Class, Siwan whereunder cognizance for the offence under Sections 498-A of I.P.C. was taken against the petitioners. In Cr. Revision no. 643 of 2013, the petitioners seek to set aside the order dated 23.07.2012 whereunder the order of Magistrate dismissing the complaint case on the ground of jurisdiction, was set aside.

3. The facts, in brief, is that the O.P. no. 2 filed a complaint case on the file of C.J.M. Siwan alleging *inter alia* that she was married with the petitioner no. 1 on 08.05.2004. After marriage, she went at the place of her husband where her husband and his family members who are petitioners before this Court started torturing in various ways



as she could not give birth of a child even after six years of marriage. Her husband performed second marriage with another lady and thereafter they brutally assaulted and attempted to burn the complainant (O.P. no. 2) by sprinkling kerosene oil. She was compelled to leave the matrimonial house and then she started living at her father's place.

4. The learned counsel for the petitioners submits that the petitioners are the resident of Vaishali district where the complainant was residing. The allegation of alleged torture relates to matrimonial house situated at Vaishali. The petitioners did not visit at the paternal place of the O.P. no. 2. There is no allegation that any of the petitioners tortured the complainant at her matrimonial place at Siwan and so the court below had no jurisdiction to take cognizance with respect to occurrence which allegedly occurred at Vaishali. He further submits that the learned Magistrate had rightly dismissed the complaint case of the complainant as per order dated 23.07.2012. The complainant filed a Cr. Revision no. 183 of 2012 which was allowed without considering the materials on records. The learned Addl. Sessions Judge has passed the impugned order in mechanical manner and so the order passed in Cr. Revision no. 183 of 2012 is also fit to be set aside.

5. The learned counsel for the complainant and APP for the State



have submitted that the court below had jurisdiction to take cognizance against these petitioners. The complainant was compelled to leave the matrimonial house and so the offence of cruelty on complainant (O.P. no. 2) persisted till the date of filing of the complainant petition. There is absolutely no illegality and both the aforesaid cases are fit to be dismissed.

6. On perusal of complaint petition and statement of complainant on S.A., I find that the complainant had specifically alleged that these petitioners started torturing her as she could not deliver any child even after six years of her marriage. The used to call her as barren lady and had threatened to commit her murder. She was ousted from the house. The petitioners at one point of time had attempted to kill her. She has alleged that the petitioners wanted her to leave the place and commit suicide. The petitioners snatched her entire belongings and ousted from their house. The complainant is residing at her father's place as a deserted lady. Admittedly, she is leading destitute life at her father's place which also amount to cruelty at the instance of the petitioners. The offence of cruelty continued on account of her ouster and during her stay at her parental place. The learned Addl. Sessions Judge after being satisfied with the material on record has rightly allowed the Cr. Revision of O.P. no. 2 directing the court below to re-assess the materials on record. The learned Magistrate, accordingly,



examined the record and after going through the complaint petition and statement of witnesses recorded during inquiry, has rightly taken cognizance against all these petitioners.

7. In view of discussions made above, I do not find any merit in the Cr. Misc. application as well Cr. Revision requiring any interference in the impugned orders. Accordingly, both the applications are dismissed.

(Sanjay Kumar, J)

rohit/-

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	20.07.2017
Transmission Date	20.07.2017

