

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.14617 of 2011

Arising Out of PS.Case No. -0 Year- null Thana -null District- BHAGALPUR

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Sangita Pathak wife of Rishikant Pathak, resident of Block No.2, Plot No.311, Third floor, Sky Line, City Apartment, Chandra Lay Out Road, Vijay Nagar, Bangalore, P.S.-Dhandra Lay Out, District- Bangalore.

.... Petitioner/s

Versus

1.The State of Bihar

2. Alka wife of Rahul Raman, daughter of Atul Chandra Choudhary, resident of Mohalla-Isakchak, Shivpuri Colony, P.S.- Ishakchak, District- Bhagalpur.

.... Opposite Party/s

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Appearance :

For the Petitioner/s : None

For the Opposite Party/s : Mr. Ashutosh Jha, Advocate

: Mr. Bijay Kant Mishra, Advocate

: Mr. Avinav Kumar, Advocate

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 31-10-2017

Despite repeated calls, no body appears on behalf of the petitioner.

2. Heard learned counsel appearing for opposite party no.2 and perused the record.

3. This application under Section 482 of the Code of Criminal Procedure (for short 'the CrPC') has been filed by the petitioner for quashing of the order dated 26.11.2010 passed by the learned Sub Divisional Judicial Magistrate, Bhagalpur in Complaint Case No.1330 of 2010 by which the petitioner and three others have been summoned to face trial for the offences punishable under Section 498A of the Indian Penal Code (for short 'the IPC') and Sections 3



and 4 of the Dowry Prohibition Act, 1961(for short 'the D.P.Act').

4. A complaint case was filed by the complainant in the court of Chief Judicial Magistrate, Bhagalpur, which was made over to the court of Sub Divisional Judicial Magistrate, Bhagalpur under Section 192 of the CrPC for enquiry or trial.

5. The complainant was examined on solemn affirmation. On behalf of the complainant, three witnesses were also examined in course of enquiry conducted under Section 202 of the CrPC. After holding enquiry, the learned Sub Divisional Judicial Magistrate, Bhagalpur, vide order dated 26.11.2010 summoned the petitioner and three others, namely, Rahul Raman, Ravi Kant Pathak and Manjula Pathak to face trial for the offences punishable under Section 498A of the IPC and Sections 3 and 4 of the D.P. Act.

6. From the pleadings made in the application, it would appear that the case of the petitioner is that she is sister-in-law (Gotni) of the complainant and is residing with her husband at Bangalore and has been falsely implicated in the present case along with other family members though she is similarly placed in the family as the complainant. She did not place any demand for dowry and has never subjected the complainant to any sort of cruelty. Her further case is that the complainant and the witnesses examined on her behalf have not made any allegation against the petitioner and she has been



summoned only on the basis of some vague and omnibus allegation made in the complaint.

7. Learned counsel appearing for opposite party no.2 has contested the matter. He has submitted that in the complaint there is allegation against the petitioner also that she used to tell the complainant that whatever demand is being made by her husband should be fulfilled or else he would be married to another girl. In course of argument, he has produced a copy of the statement of the complainant made on solemn affirmation and the statement of the enquiry witnesses, namely, Atul Chandra Choudhary, Ajit Kumar and Bashishth Narayan Jha.

8. Having heard learned counsel for the opposite party no.2 and perused the materials available on record, I find that though the complainant has made specific allegation against her husband and mother-in-law and father-in-law, only a general and vague allegation has been made as against the petitioner that she also asked the complainant to fulfill the demand made by her husband. However, the complainant in her solemn affirmation or the witnesses examined in course of enquiry under Section 202 of the CrPC have not uttered a word against the petitioner. Furthermore, it would be evident from the complaint itself that the petitioner is residing at Bangalore and the offence alleged has mainly taken place either at Dhanbad or at Ranchi



in the State of Jharkhand or at Bhagalpur in the State of Bihar. In that view of the matter, I am of the opinion that the learned Magistrate has failed to apply his judicial mind while summoning the petitioner to face trial. In order to prosecute a relative of the husband in a case under Section 498A of the IPC there has to be some specific allegation against him/her. The prosecution of the petitioner on the basis of vague allegation made in the complaint, which has not been supported by the witnesses in course of enquiry, in my considered opinion, would amount to an abuse of process of the court.

9. In the result, the application is allowed.

10. The impugned order dated 26.11.2010 passed by the learned Sub Divisional Judicial Magistrate, Bhagalpur in Complaint Case No.1330 of 2010, as far as the petitioner is concerned, is hereby quashed. The trial Magistrate shall proceed as against other accused persons in accordance with law.

(Ashwani Kumar Singh, J)

Md.S./-

AFR/NAFR	NAFR
CAV DATE	N/A
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