

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.6868 of 2011

Arising Out of Complaint Case No. 894 Year- 2006 District- NAWADA

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Mahavir Gupta, son of late Balmiki Gupta, resident of 136/7, Prem Nagar, Main Road, Nathupura, Burari, Delhi- 42, permanent address C/o Shri Rajiv Goel, Shop No. 1,D-14, CSC 2, DDA Market, Sector- 8, Rohini, Delhi- 85

.... Petitioner

Versus

1. The State of Bihar
2. Mavita Gupta, daughter of Shri Ajit Kumar Gupta, resident of Mohalla- Par Nawada, Madhuban Bara, Nawada, Police Station and District- Nawada, Bihar.

.... Opposite Parties.

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Appearance :

For the Petitioner/s : Mr. Arbind Kumar Singh, Advocate

Mr. Loknath Singh, Advocate

For the State : Mr. Jharkhandi Upadhyay, APP

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 08-09-2017

Heard learned counsel for the petitioner and learned Additional Public Prosecutor for the State.

2. By the present application preferred under Section 482 of the Code of Criminal Procedure, the petitioner has prayed for quashing of the order dated 27.04.2007 passed by the learned Sub-Divisional Judicial Magistrate, Nawadah in Complaint Case No. 894 of 2006 whereby the learned Sub-Divisional Judicial Magistrate has summoned the petitioner to face trial for the



offences under Sections 498-A and 504 read with 34 of the Indian Penal Code (for short 'IPC').

3. According to the allegations made in the complaint by the complainant, she was married to the petitioner on 03.12.2003 as per Hindu rites, ceremonies and customs at Nawadah. At the time of marriage, her father and brother had spent substantial amount of money and had given cash, ornaments, utensils and cloths as gift. After marriage, she was taken to her *sasural* at Delhi on 05.02.2003. On the very first day, her husband and relatives taunted that no dowry was paid in the marriage. They put a demand of Rs.1 lac from her. She stayed in her matrimonial house for about three and a half months. During her stay at New Delhi, she was subjected to cruelty in various ways. She was assaulted with belt and was also given electric shock by her husband, who used to allege that she was having adulterous relationship with her *Jeeja* (brother-in-law) Anil Sao. Somehow, her brother brought her back to her parents' house. At that time, she was pregnant. She gave birth to a baby child at P.M.C.H., Patna on 12.09.2004. An effort was made by her brother and father for mediation and under threat and coercion, they paid Rs.1.50 lac to her husband. It is further alleged that on 18.10.2006, her husband came to Nawadah and stayed in the house of one Birendra Sao. On the same day, they came to her house and



threatened her father and brother to give in writing that out of their own sweet will, they were dissolving the marriage and her husband Mahabir Gupta would be free to marry another girl. They also forced them to write that she was leading an adulterous relationship with her brother-in-law. When her father and brother refused to oblige, they threatened that they would ruin her life.

4. The complainant was examined on solemn affirmation and besides her, the witnesses to the complaint were also examined in course of inquiry conducted under Section 202 of the Cr.P.C. The complainant and the witnesses examined on her behalf supported the allegations made in the complaint in course of inquiry pursuant to which the learned Sub-Divisional Judicial Magistrate, Nawadah, vide order dated 27.04.2007, summoned the petitioner and Birendra Sao to face trial for the offences under Sections 498-A and 506 read with 34 of the IPC.

5. The contentions of the petitioner are as under :-

- (a) When the complainant joined the company of the petitioner, just after marriage, she was pregnant of two months.
- (b) Having noticed the pregnancy of the complainant, the petitioner asked to her, whether she was having some relationship with someone



from before the marriage?

(c) The complainant herself admitted and gave in writing in this regard that she was having relationship with her brother-in-law, Anil Sao from before her marriage.

(d) The complainant lived only for few months with the petitioner at Delhi and left his company on the pretext of going to her parental house at Nawadah. She also took away all the jewelries and belongings purchased by the petitioner for the complainant with her on the pretext that her mother wanted to see the jewelries.

(e) Since then, the complainant never came back to Delhi.

(f) Thus, the petitioner filed a matrimonial case in the court of learned Additional District Judge, Karkardooma, Delhi, vide H.M.A. No. 423 of 2007 under Section 13 of the Hindu Marriage Act for dissolution of his marriage with the complainant by a decree of divorce, which was allowed *ex parte*, vide judgment dated 24.12.2007.

(g) The complainant, however, filed an



application under Order IX, Rule 13 read with Section 151 CPC in aforesaid H.M.A. No. 423 of 2007 for setting aside ex parte judgment dated 24.12.2007, which was allowed, vide order dated 28.08.2008 and the ex parte judgment was set aside and the said matrimonial case was restored to its original file.

(h) Subsequently, in anticipation of leading peaceful life, the petitioner opted not to contest the divorce petition as a result of which, the matrimonial case bearing H.M.A. No. 423 of 2007 was dismissed for default on 09.02.2009.

(i) The complainant, thereafter, came to Delhi to reside with the petitioner, but she never allowed the petitioner to live peacefully and subjected him to cruelty in various ways. The petitioner also noticed that she was leading an adulterous life and, thus, seeing no way, the petitioner again filed a matrimonial case, vide H.M.A. No. 366 of 2010 under Section 13(1)(ia) and 13(1)(i) of the Hindu Marriage Act seeking a decree for dissolution of his marriage with the complainant on the ground of



adultery and cruelty before the court of learned
District Judge, Delhi.

6. On the basis of the aforesaid contentions, learned counsel for the petitioner has submitted that the complaint has maliciously been instituted against the petitioner and to secure the ends of justice, it is desirable that the pending proceedings in the complaint case be quashed.

7. *Per contra*, learned Additional Public Prosecutor for the State has submitted that the allegations made in the complaint are very serious. He has submitted that there is allegation that the petitioner subjected the complainant to cruelty in various ways in her matrimonial house at Delhi. She was coerced for non-fulfilment of demand of dowry. At several times, she was beaten with belt and was also given electric shock. He has submitted that there is allegation that the petitioner along with co-accused Birendra Sao subjected the complaint to cruelty even while she was staying at her parental house at Nawadah. He has submitted that as the allegations made in the complaint have been supported by the complainant and the witnesses examined in course of inquiry, no illegality can be found with the order impugned whereby the learned Sub-Divisional Judicial Magistrate has summoned the petitioner and co-accused Birendra Sao to face trial for the offences under Sections 498-A



and 506 read with 34 of the IPC.

8. I have heard learned counsel for the parties and perused the record.

9. I find substance in the submissions made by the learned Additional Public Prosecutor for the State. The petitioner is alleged to have continuously coerced the complainant and harassed her to meet his demand. There is allegation that the petitioner physically assaulted the complainant on several occasions in brutal manner. The petitioner is also alleged to have held out threats of dire consequences to the father and brother of the complainant, as they failed to give in writing that they were willfully dissolving the matrimonial relation of the complainant with the petitioner and the petitioner would be free to marry another lady. The nature of allegations levelled against the petitioner clearly attracts the ingredients of the offences under Sections 498-A and 506 of the IPC.

10. The defence taken by the petitioner that he was harassed by the complainant, as she was leading an adulterous life and was not ready to mend her ways, in the opinion of this Court, cannot be a ground for seeking quashing of the order of cognizance or the proceedings of the complaint case. Such defence and/or the defence of innocence has to be established by leading evidence in



course of trial.

11. In view of the facts noted above, I see no merit in this application. It is dismissed, accordingly.

(Ashwani Kumar Singh, J.)

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AFR/NAFR	NAFR
CAV DATE	NA
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