

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.25271 of 2012

Arising Out of PS.Case No. -760 Year- 2010 Thana -null District- PATNA

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1. Manzar Hussain Manzar, s/o late Akhtar Hussain, Head of the Department of Psychology, D.K. College Dumraon at Takia Mohalla, Ward No. 10, P.O. Dumraon, District Buxar. At Present H.O.D. in Bir Kunwar Singh University, Bhojpur, Arrah.
 2. Azfar Hussain Firoz, s/o late Akhtar Hussain, 3rd Floor, Flat No. 304, Amber Apartment, New Patliputra, Patna. At Present Reader in English Department, Z. A. Ishlamia College, Siwan.
 3. Md. Umar Hussain Afroze (U.H. Afroz), s/o late Akhtar Hussain, resident of Akhtar Manzil, Near Subhash Chowk, Lal Bagh, Darbhanga.
 4. Nuzhat Shaheen, wife of Md. U. H. Afroz, resident of Akhtar Manzil, Near Subhash Chowk, Lal Bagh, Darbhanga.
 5. Sarfaraz Ahmad, son of late Noor Mohammad, resident of House No. G 117, Housing Colony, Kankarbagh, Patna.
 6. Aysha Khatun, wife of Azfar Hussain, son of late Akhtar Hussain, 3rd Floor, Flat No. 304, Amber Apartment, New Patliputra, Patna.
 7. Zafar Hussain Sanjar, son of Akhtar Hussain, resident of village-Pura Naudiha, Post-Kabariya via Laxmisagar, District-Darbhanga

.... Petitioner/s

Versus

1. The State of Bihar &
2. Nikhat Fatma, Ex wife of Md. Afsar Hussain Pervez, D/o Syed Khurshid Ahmad Hadi, resident of Mohalla- B-7/402, PRDA Flat, Sri Krishna Puri, District- Patna.

.... Opposite Party/s

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Appearance :

For the Petitioner/s	:	Mr. S. N. P. Sinha, Sr. Advocate with Mr. Jitendra Narain Sinha, Advocate Ms. Kanchan Kumari, Advocate Ms. Rashmi Bharti, Advocate
For the Opposite Party No.1:		Mr. Nirmal Kumar Sinha, APP
For the Opposite Party No.2:		Mr. B. K. Sinha, Sr. Advocate Mr. Ranjan Kumar Sinha, Advocate Ms. Seema, Advocate

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CORAM: HONOURABLE MR. JUSTICE SANJAY PRIYA

CAV JUDGMENT

Date: 18-10-2017

1. This quashing application was heard along with
Cr. Misc. No.7569 of 2012 as the parties i.e. Petitioners and
Opposite Party No.2 are same. However, keeping in view different



nature of allegations made in the case and for the sake of brevity, judgment has been passed separately in both the cases.

2. This application under Section 482 of the Code of Criminal Procedure has been filed for quashing the order dated 29.04.2010 passed by the Judicial Magistrate, 1st class, Patna, in Complaint Case No.760-C of 2010 by which learned Magistrate after holding enquiry has found *prima facie* case against the Petitioners and husband of the Opposite Party No.2 for the offence under Section(s) 498-A Indian Penal Code.

3. The Complainant has alleged in the Complaint Petition that she was married with accused Md. Afsar Hussain Pervez on 22.05.1998 according to Muslim Rites and Rituals. She gave birth to a male child on 13.02.2000. She was tortured in her *Sasural* by her husband and his other family members (Petitioners) and the husband did not give her money for maintenance of herself and her newly born child. She filed maintenance case against her husband before the Principal Judge, Family Court, Patna, vide Maintenance Case No.210-M of 2008. Husband of the Complainant went to Kuwait and started working there at monthly salary of Rs.40,000/-. The job was arranged by her brother in Kuwait. The husband never sent/paid any money of her maintenance as well as her son. The Complainant learnt that her husband was sending money in the account of wife of his elder brother, namely, Ayesha



(Petitioner No.6). The Petitioners, who are family members of the Complainant, became infuriated when they learnt about filing of Maintenance Case and even threatened the Complainant of dire consequences if she did not withdraw the maintenance case. It is further alleged that her husband came to India in July, 2009, but he did not come to meet the Complainant and her son. He stayed in the house of his brother-Azfar Hussain Firoz (Petitioner No.2). The Complainant during the said period when her husband was in India went to Amber Apartment in the flat of Azfar Hussain Firoz (Petitioner No.2) to meet her husband. She found all the accused persons were there. On seeing the Complainant, they became infuriated and directed the Complainant along with her father to leave the place. It is further alleged that on insistence of the Complainant, Petitioner Nos.4 and 5 jumped on the Complainant and by holding the Complainant by hands started dragging her towards the door. Father of the Complainant came to save her then Petitioner Nos. 4 and 5 reacted to such act of father of the Complainant. Petitioner Nos.1 and 2 caught hold of father of the Complainant and started assaulting with slaps and fists. Petitioner No.3 abused the Complainant and her father and pushed them out of the house. The Complainant and her father made request to the accused persons to allow her husband to visit their house and stay for sometime so that love and affection between husband and wife



may be restored. Aforesaid occurrence took place on 30.07.2009. Father of the Complainant wanted to lodge a case against Petitioner Nos.1 and 5, but the Complainant did not agree for the same. It is further alleged that on request husband of the Complainant came to the house of the Complainant on 02.08.2009 along with his brother and relations. Their behaviour was not good. During his stay, husband of the Complainant started abusing and humiliating entire family. The husband also attempted to strangle neck of the Complainant with intention to kill her. The husband also assaulted the Complainant to kill her and thereafter he entered into second marriage with another lady. The husband stayed in India for about a month and thereafter left for Kuwait. The husband again abused the Complainant on 16.03.2010 on phone and also rang at the residence of father of the Complainant and gave threat of dire consequences if the Complainant does not hand over the son, Belal Ahmad, to him. It is further alleged that on 17.03.2010, Petitioner No.1 along with Petitioner Nos.2 and 3 came to the house of the Complainant and started searching her son, who was sleeping in a room. The Complainant raised objection then they gave threat. Petitioner No.2 caught the Complainant by neck and hair. The Complainant raised *halla* then her father came and they started shouting then the accused persons fled away. All the accused persons again gave threat. Husband of the Complainant used to give threat on telephone



from Kuwait. The Complainant approached the local police but the police did not lodge the First Information Report and hence Complaint Petition was filed.

4. The Court below after holding enquiry by the impugned order has found *prima facie* case against the Petitioners and another for the offence under Section(s) 498-A Indian Penal Code.

5. Heard learned counsel for the Petitioners and learned counsel for the Opposite Party No.2 as well as learned APP on behalf of the State.

6. Counsel for the Petitioners has submitted that they are the family members of husband of the Complainant. They are living separate from them having no concern with day to day affairs of the Complainant and her husband. Petitioner Nos.1 and 2 are brothers of husband of Complainant. Petitioner No.1 is the Head of Department of Psychology at D K College, Dumraon, Buxar, Petitioner No.2 is resident of Amber Apartment, New Patliputra, Patna, and he is Professor in Z A Islamia College, Siwan, Petitioner No.3 is living at Lal Bagh, Darbhanga, and Petitioner No.4 is his wife. Petitioner No.5 is not related to husband of the Complainant. He is simply family friend belonging to different sub caste *Ansari*. Petitioner No.6 is wife of Petitioner No.2. She is living with her husband. Petitioner No.7 is another brother of husband of the



Complainant, who is an Advocate in Darbhanga Civil Court and is living in Darbhanga.

7. Counsel for the Petitioners has submitted that Petitioner Nos.1, 2, 3, 4, 6 and 7 are, thus, related to husband of the Complainant, who are separate from the husband and the Complainant, never resided with them at any place, while Petitioner No.6 is not in any way related with husband of the Complainant. Present complaint has been filed to blackmail the Petitioners as husband of the Complainant is residing in foreign country. Husband- Md. Afsar Hussain Pervez has already divorced the Complainant from Kuwait on 18.05.2010 through SMS and the *Ulmas of Darul Quaza Emarat-e-Shariya*, Bihar-Odisha-Jharkhand, has confirmed the divorce. The Complainant after divorce has filed Domestic Violence Case No.50 of 2010 on 21.08.2010 against her husband and the Petitioners.

8. Counsel for the Petitioners has relied upon the decision of the Supreme Court in the case of ***Preeti Gupta vs. State of Jharkhand*** reported in (2010) 7 SCC 667, wherein, the Hon'ble Supreme Court has held that "*allegations of harassment of husband's close relations who had been living in different cities and never visited or rarely visited the place where the Complainant resided would have an entirely different complexion. The allegations of the Complainant are required to be scrutinized with*



great care and circumspection.”

9. Counsel for the State and the Opposite Party No.2 have submitted that all these Petitioners have committed torture with the Complainant as mentioned, in detail, in the Complaint Petition. They have relied on the judgment of our own High Court in the case of *Premnarayan Mishra Vs. State of Bihar* reported in *1 (2017) DMC 738 (Pat.)* and have argued that the Hon'ble Court has refused to interfere with the order of cognizance in the event there appear specific and serious allegation against the Petitioners.

10. In the instant case, from the averments made in the complaint, which has been mentioned above, in detail, it will be apparent that specific allegations have been made by the Complainant against her husband, Md. Afsar Hussain Pervez, who is not the Petitioner in this case.

11. The Complainant has alleged that the husband is not giving any amount for maintenance of her and her son. He is working in Kuwait and living there. He came to India and stayed for a month, but did not meet the Complainant. The husband had given threat on telephone from Kuwait about dire consequences. She has further alleged in the Complaint Petition that in the month of July, 2009, when the husband came to India, he did not come to meet the Complainant or her son and stayed in the house of his brother-Md. Afsar Hussain Firoz. The Complainant filed



maintenance case against her husband vide Maintenance Case No.210-M of 2008 and after filing of the aforesaid maintenance case the husband became infuriated, misbehaved and committed physical assault with the Complainant along with the Petitioners as mentioned in the Complaint Petition. The husband is earning Rs.40,000/- per month, but is not paying any amount for maintenance to the Complainant and her son- Belal Ahmad. He is sending money in the account of wife of his elder brother, namely, Md. Afsar Hussain Firoz. She is also a nominee in his bank account.

12. This Court after carefully looking into the averments of the Complaint Petition finds that specific allegation has been made against husband, Md. Afsar Hussain Pervez, of committing physical and mental torture with the Complainant and not taking appropriate care of her and her child. The Petitioner Nos.1, 2, 3, 4, 6 and 7 are relations of husband of the Complainant. They have no concern with the affairs of Complainant and her husband. Petitioner No.5 is not related with husband of the Complainant. The learned Magistrate in mechanical manner found *prima facie* case against these Petitioners along with husband of the Complainant.

13. The Hon'ble Supreme Court has held that allegation of harassment of husband's close relations, who had been



living in different cities, and never visited or rarely visited the place, where the Complainant resided, would have an entirely different complexion. The allegations of the Complainant against the Petitioners are required to be scrutinized with great care and circumspection.

14. This Court on the basis of averments made in the Complaint Petition and in the facts and circumstances of the case, discussed above, in detail, is of the view that continuance of the criminal proceeding against these Petitioners will be mere harassment to them and abuse of process of law.

15. Accordingly, the impugned order dated 29.04.2010 passed by the Judicial Magistrate, 1st class, Patna, in Complaint Case No.760-C of 2010 along with entire criminal proceeding with respect to the Petitioners is hereby quashed.

16. This application is, accordingly, allowed.

(Sanjay Priya, J)

J.Alam/-

AFR/NAFR	AFR
CAV DATE	31-07-2017
Uploading Date	22-10-2017
Transmission Date	22-10-2017

