

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.33036 of 2012

Arising Out of PS.Case No. -45 Year- 2010 Thana -Akbar Nagar District- BHAGALPUR

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1. Jay Prakash Jha Son of Panchand Jha Resident of Mohalla Anand Bag Gumti No. 12 Bhikhanpur P.S. Ishakchak District Bhagalpur.
 2. Kumar Shushil @ Shushil Kumar Jha Son of Jay Prakash Jha Resident of Mohalla Anand Bag Gumti No. 12 Bhikhanpur P.S. Ishakchak District Bhagalpur.
 3. Smt. Shailaja Jha Wife of Jay Prakash Jha Resident of Mohalla Anand Bag Gumti No. 12 Bhikhanpur P.S. Ishakchak District Bhagalpur.
 4. Sweety Wife of Sudhansu Mishra Resident of Mohalla Anand Bag Gumti No. 12 Bhikhanpur P.S. Ishakchak District Bhagalpur.
 5. Ashish Kumar Son of Jay Prakash Jha Resident of Mohalla Anand Bag Gumti No. 12 Bhikhanpur P.S. Ishakchak District Bhagalpur.

.... Petitioner/s

Versus

1. The State of Bihar
2. Khushbu Kumari Wife of Kumar Shushil Jha and Daughter of Shasidhar Jha Resident of Village Damodarpur P.S. Akbar Nagar District Bhagalpur

.... Opposite Party/s

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Appearance :

For the Petitioner/s	:	Mr. Kundan Kumar Mr. Dilip Kumar
For the Opposite Party/s	:	Mr. Gopal Prasad Roy
For the State	:	Mr. Akhileshwar Dayal, APP

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CORAM: HONOURABLE MR. JUSTICE SANJAY KUMAR

ORAL JUDGMENT

Date: 10-05-2017

Heard Mr. Kundan Kumar, learned counsel for the petitioners,
Mr. Gopal Prasad Roy, learned counsel for the Opposite Party No. 2
as well as Mr. Akhileshwar Dayal, APP for the State.

2. The petitioners seek quashing of the order dated 07.01.2011,
passed by the Chief Judicial Magistrate, Bhagalpur in Akbar Nagar
P.S. Case No. 45 of 2010, whereunder these petitioners were
summoned for the offence under Sections 498A, 327 and 120B of the
Indian Penal Code and Section 3/4 of the Dowry Prohibition Act.



3. The facts in brief is that the O.P. No. 2 (complainant) filed a Complaint Case No. 1471 of 2010 on the file of Chief Judicial Magistrate, Bhagalpur alleging therein that after her marriage which took place on 27.02.2009, her husband and in-law's started torturing her in connection with further dowry. She has further alleged that her husband and in-law's took her entire ornaments worth Rs. 2 lacs and cloths worth Rs. 50,000/-. She under compelling circumstance and also to save her life came back at her father's place where she started leading her deserted life. A copy of the said complaint petition was sent to concerned police station for institution of case under Section 156(3) of the Cr.P.C. and enquiry. Accordingly, Akbarnagar P.S. Case No. 45 of 2010 was registered under Section 498A, 327, 120B. The matter was investigated and police submitted charge-sheet against the petitioners. The learned Magistrate took cognizance of the offence as stated above.

4. The learned counsel for the petitioners submits that the O.P. No. 2 (complainant) is not willing to lead conjugal life with her husband since the date of her marriage. The petitioner no. 2 (husband) wants to keep the complainant with full honour and dignity. He had filed a Matrimonial Case No. 208 of 2009 for restitution of conjugal right. As against this, the O.P. No. 2 (complainant), who is not willing to lead conjugal life has filed a Matrimonial Suit No. 69 of 2011 for dissolution of her marriage



under Section 13B of the Hindu Marriage Act. The matrimonial dispute was referred to the Conciliation Centre where both parties entered into a compromise and they decided to dissolve the matter, subject to payment of Rs. 7 lacs by the O.P. No. 2 to the complainant. The marriage of petitioner no. 2 (husband) and O.P. No. 2 (complainant) was to be dissolved on payment of the said amount. The petitioner no. 2 (husband) deposited an amount of Rs. 2 lacs and the same was received by the complainant. He further deposited Rs. 2 lacs and 3 lacs as second and third installments. The complainant after receiving third installments has started demanding more money to the tune of Rs. 18 lacs towards the expenses of the marriage. In the above background, learned counsel for the petitioners submitted that the complainant in order to harass the petitioners has lodged the present case. The order taking cognizance and issuance of summons is against the materials on record and so the same is fit to be quashed.

5. The Learned APP, on the other hand, opposed the submissions by submitting that there are sufficient materials on record to proceed against the petitioners and the court below has rightly taken cognizance and ordered for issuance of summons.

6. On perusal of complaint petition and documents on record, I find that the main allegation of torture in connection with demand of money is against the petitioner no. 2 (husband). The husband since the first day of his marriage, started torturing and neglecting the



complainant. She has further asserted that her husband demanded money from her family members. During the stay of complainant at matrimonial house, he used to torture her. Her husband assaulted and also threatened to commit her murder. The allegation of torture is general and omnibus against the other petitioners who are in-laws of the complainant.

7. Accordingly, the order dated 07.01.2011 passed by the Chief Judicial Magistrate, Bhagalpur in Akbarnagar P.S. Case No. 45 of 2010 so far petitioner nos. 1 (Jai Prakash Jha), 3 (Shailaja Jha), 4 (Sweety) and 5 (Ashish Kumar) are concerned is set aside and this application to this extent is allowed. However, prosecution with respect to petitioner no. 2 (husband) will continue before the court below.

(Sanjay Kumar, J)

rohit/-

AFR/NAFR	NAFR
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