

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.29779 of 2014

Arising Out of PS.Case No. -2833 Year- 2012 Thana -MUZFFARPUR COMPLAINT CASE
District- MUZAFFARPUR

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Sharad Goenka, Son of Sajjan Goenka Resident of 29, Cantonment, Shilong-1,
P.S.-Sadar, District-East Khasi Hills (Meghalaya)

.... Petitioner/s

Versus

1. The State of Bihar
2. Khushu Goenka @ Khushbu Jindal, D/o Sri Ramavatar Jindal Resident of Mohalla-Sikandarpur, Near Navdurga Kalimandir (Jindal House), P.S.-Town, District-Muzaffarpur.

.... Opposite Party/s

with

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Criminal Miscellaneous No. 16566 of 2014

Arising Out of PS.Case No. -2833 Year- 2012 Thana -MUZFFARPUR COMPLAINT CASE
District- MUZAFFARPUR

- =====
1. Sajjan Kumar Goenka @ Sajjan Goenka S/o Kamkhya Lal Ji Goenka
 2. Santosh Goenka W/o Sajjan Kumar Goenka All resident of 29, Cantonment, Shilong-1, Meghalaya.

.... Petitioner/s

Versus

1. The State of Bihar.
2. Khushbu Goenka @ Khushbu Jindal D/o Sri Ramavatar Jindal Resident of Mohalla Sikandarpur, Near Navdurga Kalimandir (Jindal House), P.S. Town, District Muzaffarpur.

.... Opposite Party/s

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Appearance :

(In both cases)

For the Petitioner/s : Mr. Alok Kumar Agrawal, Advocate.
Mrs. Priya Gupta, Advocate.

For the Opposite Party/s : Mr. Sanjay Parasmani, Advocate.

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CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR

ORAL JUDGMENT

Date: 30-06-2017

Heard learned counsel for the parties.

2. As both the applications arise out of the same impugned order, so they are being disposed of by this common judgment.

3. The petitioners are challenging order taking cognizance



dated 08.05.2013 passed by the learned Sub Divisional Judicial Magistrate, Muzaffarpur in Complaint Case No. 2833 of 2012 (T.R. No. 2202/2013-1896/14 under Sections 323 and 498A/34 of the Indian Penal Code and Sections 3 and 4 of the Dowry Prohibition Act.

4. Learned counsel for the petitioners submits that petitioner in Cr. Misc. No. 29779 of 2014 is the husband and petitioners in Cr. Misc. No. 16566 of 2014 are the father-in-law and mother-in-law of the complainant. It is submitted that in fact the complainant deserted her husband so he was compelled to file a divorce suit on account of desertion prior to lodging of this complaint case, thereafter in retaliation the present complaint case has been filed by the wife and the allegation levelled against the petitioners are general and omnibus in nature and the husband is still ready to keep his wife/complainant. It is further submitted that the matter was referred by the court to the Mediation Centre for settlement between the parties but unfortunately it failed, so prosecution launched by the complainant is malicious in nature. Moreover, no part of alleged demand and torture was made at Muzaffarpur.

5. Learned counsel appearing on behalf of the O.P. No. 2 submits that there is specific allegation against the husband and in-laws of the complainant that after solemnization of marriage in the year 2007, started assaulting and torturing her to realise further demand of Rs. 15,00,000/- to purchase a flat. So the facts stated in the



complaint do constitute a *prima facie* case under Sections 323 and 498 of the Indian Penal Code and Sections 34 of the Dowry Prohibition Act.

6. The complainant's case, in brief, is that, on 13.02.2007, her marriage was solemnized with Sharad Goenka at Muzaffarpur. The accused persons started making further demand of Rs. 15,00,000/- after marriage for purchasing a car and flat and used to torture her. Initially her father assured to meet demand but after lapse of three years, he expressed his inability, so they started again torturing and assaulting her invariably. Father-in-law and mother-in-law of the complainant used to make demand of dowry telephonically from parents of the complainant and in the month of September, 2011, accused persons assaulted her and also ousted from the matrimonial house keeping her jewellery and belongings, so her father brought her to Muzaffarpur.

7. Having considered the rival submissions and on perusal of record, it is apparent that allegation levelled in the complaint petition does make out a *prima facie* case under Sections 323 and 498A/34 of the Indian Penal Code as well as under Sections 3 and 4 of the Dowry Prohibition Act against the petitioners. The defence of the petitioners at pre-trial stage cannot be considered.

8. In the case at hand, there is specific allegation in the complaint that the father-in-law and mother-in-law of the complainant



invariably used to make demand of further dowry from the parents of the complainant living at Muzaffarpur and threatened to kick her out from her matrimonial home if demand of Rs. 15,00,000/- is not fulfilled. Ultimately, she was ousted as further demand of dowry of Rs. 15,00,000/- was not realized.

9. The Hon'ble Supreme Court in the case of *Sunita Kumari Kashyap v. State of Bihar* reported in (2011)11 SCC 301, observed as under:

16. It is true that Section 177 of the Code refers to the local jurisdiction where the offence is committed. Though the expression "cause of action" is not a stranger to criminal cases, in view of Sections 178 and 179 of the Code and in the light of the specific averment in the complaint of the appellant herein, we are of the view that the said decision is not applicable to the case on hand."

10. In this case, the Hon'ble Supreme Court further observed as follows:

"18. We have already adverted to the details made by the appellant in the complaint. In view of the specific assertion by the appellant-wife about the ill-treatment and cruelty at the hands of the husband and his relatives at Ranchi and of the fact that because of their action, she was taken to her parental home at Gaya by her husband with a threat of dire consequences for not fulfilling their demand of dowry, we hold that in view of Sections 178 and 179 of the Code, the offence in this case was a continuing one having been committed in more local areas and one of the local areas being Gaya, the learned Magistrate at Gaya has jurisdiction to proceed with the criminal case instituted therein. In other words, as the offence was a continuing one and the episode at Gaya was only a



consequence of continuing offence of harassment and ill-treatment meted out to the complainant, clause (c) of Section 178 is attracted. Further, from the allegations in the complaint, it appears to us that it is a continuing offence of ill-treatment and humiliation meted out to the appellant at the hands of all the accused persons and in such continuing offence, on some occasions all had taken part and on other occasions one of the accused, namely, the husband had taken part, therefore, undoubtedly clause (c) of Section 178 of the Code is clearly attracted.”

11. Section 179 of the Cr.P.C. reads as follows:

“179. Offence triable where act is done or consequence ensues.- When an act is an offence by reason of anything which has been done and of a consequence which has ensued, the offence may be inquired into or tried by a Court within whose local jurisdiction such thing has been done or such consequence has ensued.”

12. In the present case, there is specific assertion in the complaint regarding making of demand of dowry telephonically by father-in-law and mother-in-law from parents of the complainant residing at Muzaffarpur in Bihar. Ultimately, as the demand of Rs. 15 lacs was not realized then complainant was kicked out of the matrimonial home and forced to go to her parents home at Muzaffarpur so a part of occurrence was committed at Muzaffarpur, moreover, in view of Sections 178 and 179 of the Cr.P.C., it is a continuing offence having been committed in more local areas and one of the local areas where demand was made telephonically is at Muzaffarpur, so the learned Magistrate at Muzaffarpur has



jurisdiction to proceed with the criminal case instituted therein. So for the aforesaid reasons, both the petitions stand dismissed.

(Arun Kumar, J)

Sujit/-

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