

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.41138 of 2011

Arising Out of PS.Case No. -1159 Year- 2010 Nawada Complaint District- NAWADA

=====

1. Md. Islam S/O Maniruddin Resident Of Village- Amawan , P.S.- Rajauli,
District- Nawada.

.... Petitioner/s

Versus

1. The State Of Bihar
2. Mehrun Nisha D/O Md. Saud Alam Resident Of Mohalla- Momin Tolla, Thana
Road, P.S.- Pakribrawan, District- Nawada.

.... Opposite Party/s

=====

Appearance :

For the Petitioner : Mr. Sheo Kumar Prasad, Adv.
For the Opposite Party : Mr. Pankaj Kumar, Adv.
For the State : Dr. Rabindra Kumar, APP.

=====

CORAM: HONOURABLE MR. JUSTICE SANJAY PRIYA

ORAL JUDGMENT

Date: 11-09-2017

1. Heard learned counsel for the petitioner and the State.

2. This application has been filed for quashing the order dated
10-03-2011 passed by learned Sub Divisional Judicial Magistrate,
Nawada in Complaint Case No. 1159 of 2010 by which, the learned
Magistrate after holding inquiry u/S 202 Cr.P.C. has found prima
facie against the petitioner for the offence under Section-498A of the
IPC and ¾ of Dowry Prohibition Act.

3.The petitioner is Devar of the complainant. He was working
in Saudi Arabia at the relevant time of occurrence. In support of his
contention, Annexure-3, which is employment certificate issued from
the Employer of the petitioner, has been enclosed, wherein it has been
mentioned that the petitioner was employed as Auto Electrician from
14-12-2009 to 22-08-2011. The occurrence is said to have taken place



on 08-06-2010 till the date of filing of the instant complaint i.e. 15-09-2010.

4. Counsel for the petitioner has further submitted that husband of the complainant has filed Matrimonial Case No. 90 of 2010 u/S 9 of Hindu Marriage Act for restitution of Conjugal Rights. Counsel for the petitioner has further submitted that the aforesaid matrimonial case has been allowed although counsel for opposite party No. 2 has submitted that he has no instruction on that point. Learned counsel for opposite party No. 2 has submitted that the offence u/S 498A of the Indian Penal Code is a continuing offence. The employment certificate (Annexure-3) is just an alibi, which can be tested only during trial.

5. Counsel for the petitioner has submitted that in the complaint petition itself, there is no any specific allegation of overt act against him. He has no concern with the affairs of family members of informant and others.

6. The Hon'ble Supreme Court in several decisions has decided the issue, which is involved in this case. The Hon'ble Supreme Court in a decision reported in **2010(7) SCC 667 (Preeti Gupta & Another Vs. The State of Jharkhand & Anr.)** has held as follows:

“The allegation of harassment by the husband's close relations who had been living in different cities and never visited or rarely visited the place where the



complainant wife resided would have an entirely different complexion. Such allegations of the complainant are required to be scrutinized with great care and circumspection”.

7. Similar view has been taken by the Hon’ble Supreme Court in a decision reported in **2013(1) PLJR 10 (Geeta Mehrotra & Anr. Vs The State of U.P. & Anr.)**

8. In such circumstances, this court after looking into allegation in the complaint and also relying upon the aforesaid decisions as well as Annexure-3, which shows that he was not available at the relevant time, is of the view that the continuance of criminal proceeding against the petitioner is mere harassment and an abuse of process of the court.

9. Therefore, impugned order dated 10-03-2011 passed by learned Sub Divisional Judicial Magistrate, Nawada in Complaint Case No. 1159 of 2010 by which cognizance has been taken against the petitioner along with entire criminal proceeding against the petitioner is quashed.

10. This Cr. Misc. Application is ***allowed***.

(Sanjay Priya, J)

A.K.V./-

AFR/NAFR	AFR
CAV DATE	
Uploading Date	03-10-2017
Transmission Date	03-10-2017

