

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.26275 of 2011

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1. Rajnish Kumar Akhileshwar Kumar
2. Arvind Kumar Akhileshwar Kumar
3. Akhileshwar Kumar son of
4. Uma Devi W/O Akhileshwar Kumar
5. Reena Devi W/O Arvind Kumar
All R/o village- Berua, P.S.-Sanaiya, O.P. Jaintpur, Distt.-Muzaffarpur.

.... Petitioners

Versus

1. The State Of Bihar
2. Payal Devi D/O Bhupendra Kumar Katchi Pakki, P.S.- Sadar. Distt.-
Muzaffarpur.

.... Opposite Parties

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Appearance :

For the Petitioner/s : Mr. Shashi Bhushan Kumar, Advocate

For the Opposite Party/s : Mr. APP

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CORAM: HONOURABLE MR. JUSTICE JITENDRA MOHAN SHARMA
ORAL JUDGMENT

Date: 20-04-2017

This Criminal Miscellaneous application has been filed for quashing the order dated 19.05.2011 passed in Complaint Case No. 2886 of 2010, Tr. No. 2164 of 2011 by the learned S.D.J.M., East, Muzaffarpur whereby and whereunder cognizance of the offence under Section 498A of the Indian Penal Code and Section 4 of Dowry Prohibition Act has been taken against the petitioners and further for quashing the entire criminal proceeding in this connection.

2. Heard learned counsel for the petitioners and learned APP for the State.

3. As per the complaint petition, the petitioner no. 1 proposed before the complainant for marriage to which the brother of the complainant also accepted, thereafter, the petitioners no. 2 to 5 gave consent for marriage of the petitioner no. 1 with the complainant but demanded Rs. 3 lakhs and one



Hero Honda Motorcycle. However, the brother of the complainant proposed to give Rs. 1 lakh for marriage expense and further to solemnize the marriage in temple, then, on 02.03.2009 the marriage of the complainant was performed in the temple with petitioner no. 1. After marriage when the complainant went to her sasural, after some times the petitioners started demanding Rs. 2 lakhs and Hero Honda Motorcycle as dowry and due to non-fulfillment they started torturing and assaulting her and further she was pregnant which was aborted and on 20.08.2010 all the petitioners snatched her all belongings and ousted from the in-laws house and petitioner no. 1 wants to marry again with another girl. The complainant was examined on solemn affirmation and she produced Rita Devi inquiry witness no. 1 and Usha Singh inquiry witness no. 2. Both have supported the allegation of complainant during inquiry. The learned S.D.J.M. after considering the allegations as made out in the complaint petition and further considering the statement of the complainant on S.A. and the statements of inquiry witnesses passed the impugned order.

4. Submission on behalf of the petitioners is that the petitioner no. 1 has not married with O. P. No. 2. The inquiry witnesses are fake witness as on the addresses given they cannot be located. In addition to complaint case, the complainant also filed same complaint before the Superintendent of Police, Muzaffarpur on 30.09.2010 which was sent by him before the Family Advice Centre, Muzaffarpur and the Family Advice Centre made detail inquiry in this connection and after hearing both sides finds no marriage between petitioner no. 1 and the complainant has ever been solemnized and the complainant wants to implicate the petitioners falsely by making a concocted story with a



purpose to extract money from petitioner no. 1 and submitted a report about it on 09.05.2011. The complainant also filed first information report vide Minapur P.S. Case No. 118 of 2011 under Sections 406, 498A, 323 and 349 of the Indian Penal Code against the petitioners and she also wrote to D.I.G. Tirhut Range, Muzaffarpur in this connection. In that connection inquiry was made by the Officer In-charge of Jaithpur Police Station and he also found that no marriage was solemnized and submitted a report before the D.I.G., Tirhut Range, Muzaffarpur. The complainant also made similar complaint before the Women Help Line, Muzaffarpur and after hearing closed the complaint of O. P. No. 2 on 01.06.2011. The member of Panchayat Samiti and Mukhiya of the Gram Panchayat has also given certificate and affidavit that the complainant was never married with petitioner no. 1. The complainant has made a concocted story with false allegation against the petitioners with intention to only implicate in such a false case and as such the impugned order is fit to be set aside and quashed. The entire complaint case is vexatious and malicious and proceeding in the complaint case will be abuse of the process of the court.

5. On the other hand, learned APP submits that all these documents were not available before the learned S.D.J.M. when he was passing the impugned order and all these documents can be adjudged at the proper stage at the time of framing of charge and not at this stage. The grievance and contentions of the petitioners can only be adjudged at the later stage i.e. at the time of framing of charge and not at this stage. It is well settled principle of law that at the time of taking cognizance the defence of the accused persons cannot be looked into.



6. Having considered the submissions urged at the bar, going through the complaint petition, statement o complainant on S.A. and the statements of inquiry witnesses it is manifest that the learned S.D.J.M. has passed the impugned order rightly and there is no illegality, incorrectness or impropriety in the said order. At this stage, the court is only required to see as to whether, on the basis of materials collected during inquiry, prima facie case is made out or not and here, the learned S.D.J.M. has rightly found that prima facie offence under Section 498A of the Indian Penal Code and Section 4 of Dowry Prohibition Act is made out against the petitioners and accordingly, passed the order to issue summons against them. The contentions of the petitioners and the documents can be looked into at proper stage, at the time of framing of charge, and not at this stage.

7. In the result, finding no illegality, incorrectness or impropriety in the impugned order, the same is hereby confirmed. Accordingly, finding no merit in this Criminal Miscellaneous application, the same is hereby dismissed.

(Jitendra Mohan Sharma, J)

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