

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.44102 of 2014

Arising Out of PS.Case No. -3 Year- 2013 Thana -AKBARNAGAR District- BHAGALPUR

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1. Bharat Sah @ Gochi Sah Son of Late Chaturi Sah
 2. Ganga Devi Wife of Bharat Sah
 3. Ghanshyam Prasad Sah
 4. Pradeep Sah
 5. Manoj Sah

All Sons of Bharat Sah, resident of village and P.S.- Amarpur, Kanu Tola,
District- Banka

.... Petitioner/s

Versus

1. The State of Bihar
2. Soni Devi Wife of Ghanshyam Pd. Sah, daughter of late Balmiki Pd. Sah,
resident of English Chichron, P.S.- Akbarnagar, District- Bhagalpur

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Prahalad Kr. Bhagat, Advocate
For the O.P. : Mr. Subodh Prasad, Advocate
Mr. Amit Kumar Rakesh, APP

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CORAM: HONOURABLE MR. JUSTICE SANJAY KUMAR

ORAL JUDGMENT

Date: 01-09-2017

Heard the parties and perused the record.

2. This criminal miscellaneous application under section 482 of the Code of Criminal Procedure, has been filed to quash the order dated 28.11.2013 passed by the learned Chief Judicial Magistrate, Begusarai in Akbarnagar Police Station Case No. 03/2013 whereby and whereunder the learned Magistrate, finding *prima facie* case for the offences under sections 498(A)34 of the Indian Penal Code and section 3/4 of Dowry Prohibition Act, summoned the petitioners to face the trial.



3. The fact of this case, in brief, is that the petitioners are in-laws and husband of the opposite party no. 2. It has been alleged that when the complainant went to her Sasural, her husband and in-laws started demanding Rs.50,000/- and a motor cycle as dowry. When the said demand was not fulfilled, she was tortured by them and lastly they ousted her from their house.

4. The learned counsel for the petitioners submits that the allegation of torture is omnibus against the petitioners. The learned Magistrate without applying judicial mind, has passed the order in mechanical manner and so, the same is fit to be quashed.

5. The learned Additional Public Prosecutor on the other hand opposed the submission.

6. On perusal of FIR and impugned order, I find that the petitioner no. 3 Ghanshyam Prasad Sah, is husband of the informant. It has been specifically alleged that her husband used to torture and assault her since the date of her marriage. The marriage of informant took place in the year 2005. The informant has stated that a Panchayati was also convened on 25.11.2009 to settle the dispute and thereafter, the informant was taken to the house of her husband where she was assaulted and was ousted from her matrimonial house on 01.10.2012. The matter was investigated and allegation of torture and assaulted was found true. The allegation of torture and assault appears



specific against the husband. The learned Magistrate has rightly taken cognizance. I do not find any illegally in taking cognizance against husband and as such, the prayer of petitioner no. 3 for quashing the order dated 28.11.2013 passed by the learned Chief Judicial Magistrate, Begusarai in Akbarnagar Police Station Case No. 03/2013, is dismissed.

7. So far petitioner nos. 1, 2, 4 and 5 are concerned, they are in-laws of the opposite party no. 2 related as father, mother and brother of the husband of the informant. They claim that they are residing separately, having no concern with the informant and her husband. In this regard I would like to refer the case of *Neelu Chopra vs. Bharti* (2009) 10 SCC 184, *Geeta Mehrotra and others vs. State of U.P. and others* (2012) 10 SCC 741, 2013 (2) PLJR 210 (S.C.), *Preeti Gupta and others vs. State of Jharkhand and others* (2010) 7 SCC 667 wherein the Hon'ble Apex Court has reiterated that in absence of specific allegation and *prima facie* case against co-accused, the order taking cognizance will be bad in law and that will be an abuse of process of court. In this case, petitioner nos. 1, 2, 4 and 5 are in-laws of opposite party no. 2 and they claim that they are residing separately. The marriage of informant took place in the year 2005 and after 8 years of marriage, the informant has alleged the allegation of assault and mentally torture in connection with demand



of Rs. 50,000/- and a motor cycle, which appears omnibus. It is not expected that after a period of 8 years of marriage, the in-laws will demand the dowry as stated above and so, criminal prosecution of these petitioners would amount to abuse of process of Court.

8. Accordingly, order dated 28.11.2013 taking cognizance with respect to petitioner nos. 1, 2, 4 and 5 is quashed and this criminal miscellaneous application is disposed of in the manner indicated above.

(Sanjay Kumar, J)

Mahesh/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	24.09.2014
Transmission Date	24.09.2017

