

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.35530 of 2014

Arising Out of P.S.Case No.262 Year- 2010 Thana -ALAMGANJ District- PATNA

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1. Kamaluddin S/o Rahamatullah
 2. Jamal uddin S/o Rahamatullah
 3. Jarina Begum W/o Kamaluddin Petitioners No.-1 to 3 are Resident of village- Saratha, P.S.- Dhaka, District- East Champaran
 4. Azmeri Khatoon W/o Khairuddin Resident of village- Sahatha, Police Station- Bhagwanpur, District- Vaishali, at resident of Mohalla- Near Naugarwa Masjid, Police Station- Sultanganj, District- Patna

.... Petitioners

Versus

1. The State of Bihar
2. Tabassum Fatima Wife of Fakharuddin Ali Ahmed, Daughter of Md. Jainul Haque Resident of village- Saratha, Police Station- Dhaka, District- East Champaran. At Present Resident of Mohalla- Sah Colony, Alamganj, Police Station- Alamganj, District- Patna, Bihar

.... Opposite Parties

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Appearance :

For the Petitioners : Mr. S.V.Verma, Advocate.

For the Opposite Parties : Mr. Jharkhandi Upadhyay, APP

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CORAM: HONOURABLE MR. JUSTICE SANJAY KUMAR

ORAL JUDGMENT

Date: 08-08-2017

This application under section 482 of the Cr.P.C. has been filed to quash the order dated 10.01.2013 passed by learned SDJM, Patna City in Alamganj P.S.Case No.262 of 2010 whereunder the learned SDJM finding prima-facie case for the offence under Sections 498(A)/34 of the IPC and Section 3/4 of the Dowry Prohibition Act, summoned the petitioners.

2. Heard and perused the record.

3. The above Alamganj P.S.Case No.262 of 2010 was



registered on the basis of written report of Opposite Party No.2 whereunder she has alleged that her husband and in-laws used to abuse, torture and assault her since the date of marriage which took place on 22.12.2003. They were demanding one flat at Patna. From the said wed-lock she was blessed with a son on 21.05.2006 and a daughter on 07.02.2008. She was sent to her parents where nobody came to take her. She has further alleged that her husband took her to Delhi where he again started torturing and after snatching her mobile and belongings ousted from the house. The matter was enquired and police submitted chargesheet against the petitioners and other co-accused on the basis of which, learned SDJM took cognizance of offence.

4. It has been submitted that these petitioners are brother's wife and married sister of the husband of Opposite Party No.2. They are residing separately having no concern with the affairs of the complainant or her husband. The allegation of demand of dowry and torture is omnibus. No specific act of assault has been attributed against any of the petitioners and so the impugned order is fit to be quashed.

5. Learned APP opposed the submissions.

6. On perusal of FIR, I find that the case has been registered on the basis of written report containing three pages. She



has stated that her husband had taken her to Iran where her husband used to torture her. She was sent back to her father's place at Patna where she was blessed with a daughter. During this period nobody from the side of in-laws came to see her. The main grievance of the informant appears against the husband who is not petitioner before this Court. In this regard, the learned counsel for the petitioners has cited some decision of the Supreme Court, i.e., the case of Neelu Chopra vs. Bharti, (2009) 10 SCC 184, Geeta Mehrotra and another vs. State of Uttar Pradesh and another, (2012) 10 SCC 741, 2013 (2) PCCR 210 (SC) and Preeti Gupta and another vs. State of Jharkhand and another, (2010) 7 SCC 667 : 2010 (3) PCCR 178 in which the 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. It has further been submitted that Supreme Court has also noticed that in the matters arising out of matrimonial cases, it is a tendency to implicate all family members in the FIR, casually mentioning their names and claiming their active involvement, as such, taking cognizance against them would not be justified.

7. The petitioners in the present application are brother's wife and sister of the husband of informant. The husband, father-in-law and mother-in-law are not petitioners before this Court. In the above



ruling, it has been held by the Apex Court that if FIR/complaint does not disclose any specific allegation against the accused more so on co-accused specially in the matter out of matrimonial cases, it would be clear abuse of the legal and judicial process to mechanically send the named accused in the FIR to undergo the trial unless of course the FIR discloses specific allegations which would persuade the court to take cognizance of offence alleged against the relatives of the main accused who are prima-facie not found to have indulged in physicals and mental torture of the complainant. The allegation against these petitioners as stated above appears to be omnibus and so their prosecution would be an abuse of the process of the Court.

8. In the facts and circumstances stated above, the impugned order dated 10.01.2013 passed in Alamganj P.S.Case No.262 of 2010 with respect to these petitioners is quashed and this criminal miscellaneous application is allowed.

(Sanjay Kumar, J)

B.Kr./-

AFR/NAFR	NAFR
CAV DATE	
Uploading Date	21.08.2017
Transmission Date	21.08.2017

