

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.43577 of 2014

Arising Out of PS.Case No. -48 Year- 2013 Thana -MAHILA PS District- JEHANABAD

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Niraj Gupta @ Niraj Kumar Son of Late Mahendra Sao Resident of Village-
Makhdumpur, P.S.-Makhdumpur, District-Jehanabad.

.... Petitioner

Versus

1. The State of Bihar
2. Renu Devi Daughter of Surya Prakash Resident of Village-Sakraicha, P.S.-
Parsa Bazar, District-Patna.

.... Opposite Party/s

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Appearance :

For the Petitioner	:	Mr. Kumar Rajeev, Advocate Mr. Binay Kumar Singh, Advocate
For the State	:	Mr. A. L. Pandit, APP
For O.P. No.2	:	Mr. Birendra Kumar, Advocate

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CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR

ORAL JUDGMENT

Date: 24-11-2017

Heard learned counsel for the parties.

2. The petitioner seeks quashing of the cognizance order dated 13.03.2014, passed by Judicial Magistrate, 1st Class, Jehanabad in Mahila P.S. Case No.48 of 2013 thereby taking cognizance of the offence under Section 498A of the Indian Penal Code.

3. Learned counsel for the petitioner submits that the present police case was lodged by his wife on 19.07.2013, before that she has already filed Complaint Case No.1541(C) of 2012 on similar facts under Section 498A of the Indian Penal Code. In the present case, police submitted charge-sheet only under Sections 341, 323 and 504 of the Indian Penal Code. After complaint case the petitioner brought his wife to matrimonial home but she was not intending to live with him and again she filed a police case i.e. Mahila P.S. Case No.48 of 2013 under



Section 498A of the Indian Penal Code and allegation is of committing assault. The petitioner is already facing trial in Complaint Case No.1541(C) of 2012 for charge under Section 498A of the Indian Penal Code and a police case is filed and the court without any material on record took cognizance under Section 498A of the Indian Penal Code though the police had not submitted charge-sheet under the said section. Moreover, it would also be a case of double jeopardy because for the same offence, the petitioner could be prosecuted in another trial.

4. Learned counsel appearing on behalf of opposite party no.2, the informant, submits that the husband has also filed a divorce suit and used to torture his wife and concedes that earlier to the present police case his wife has also filed Complaint Case No.1541(C) of 2012 and the same is still pending.

5. The fact giving rise to the case is that the informant, opposite party no.2, was married with the petitioner on 24.04.2012 and after few months of the marriage she was being assaulted by husband and other family members, so she filed Complaint Case No.1541(C) of 2012 in Patna Civil Court. The husband of opposite party no.2 submitted in the complaint case that he would keep his wife in proper way in the matrimonial home, so she came back along with her husband but just after a fortnight again started assaulting her. On 17.07.2013, 18.07.2013 and 19.07.2013 they made an attempt to set fire on her body after pouring kerosene oil but due to alarm raised by the wife, people



intervened. She further alleged that the accused persons were making demand of vehicle and Rs.1,00,000/- cash for doing business.

6. Having considered rival submissions and on perusal of records, it is apparent that the wife, opposite party no.2, has already filed Complaint Case No.1541(C) of 2012 against the husband and other family members and the case is still pending and in that case the petitioner filed undertaking to keep her with dignity and brought her to matrimonial home but it is alleged that she was assaulted and also an attempt on her life was made. The police after investigation submitted charge-sheet only under Sections 341, 323 and 504 of the Indian Penal code and not under Section 498A of the Indian Penal Code. Double jeopardy means that a person cannot be punished for the same offence more than once. Constitution of India also guarantees this fundamental right under Article 22, which incorporates the principles of double jeopardy. There is maxim in English common law that *nemo debet bis vexari, si constat curiae quod sit pro una et eadem causa*, which means no man shall be punished twice, if it appears to the court that it is for one and the same cause. Section 300 Cr.P.C. also relates to double jeopardy. Section 71 of the Indian Penal Code relates to limit of punishment of offence made up of several offences. Anything which is an offence is made up of parts, any of which parts is itself an offence, the offender shall not be punished with the punishment of more than one of such his offences, unless it be so expressly provided. As the petitioner already is



being prosecuted under Section 498A of the Indian Penal Code in Complaint Case No.1541(C) of 2012 and this incident of assault as per the allegation happened during the period when she was taken back by the husband after giving undertaking in the complaint case. Moreover the police also filed charge-sheet only under Sections 323, 341 and 504 of the Indian Penal Code and the Magistrate oblivious of the fact that petitioner being already prosecuted for charge under Section 498A of the Indian Penal Code in Complaint Case No.1541(C) of 2012 again has taken cognizance under Section 498A of the Indian Penal Code also, which means he will be prosecuted twice for the same offence, so the impugned order dated 13.03.2014, passed by Judicial Magistrate, 1st Class, Jehanabad in Mahila P.S. Case No.48 of 2013 is set aside and the learned Magistrate is directed to pass a fresh order in view of the aforesaid observations.

7. With the said observations, the quashing application stands allowed.

(Arun Kumar, J.)

S.Kumar/-

AFR/NAFR	NAFR
CAV DATE	NA
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