

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.14254 of 2014

Arising Out of PS. Case No.-173 Year-2012 Thana- ROHTAS COMPLAINT CASE District-
Rohtas

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1. Onkar Nath Mishra @ Pankaj S/o Sri Vinod Kumar Mishra
 2. Vinod Kumar Mishra S/o Late Mangal Dutta Mishra
 3. Saraswati Devi W/o Sri Vinod Kumar Mishra
 4. Kedar Nath Mishra S/o Sri Vinod Kumar Mishra
 5. Archana Devi @ Archana Mishra W/o Sri Kedar Nath Mishra
 6. Poonam Mishra @ Poonam D/o Sri Vinod Kumar Mishra All are
resident of Quarter No. 7/9/29 L, Gandhi Nagar Colony, Naka
Faizabad, P.S. & District Faizabad (U.P.).

... .. Petitioner/s

Versus

1. The State Of Bihar.
2. Sweta Kumari W/O Onkar Nath Mishra @ Pankaj, D/O Sri Ashok Kumar
Mishra At Present Residing At Minakshi Sadan, Basawan Road, Dalmia
Nagar, P.O. & P.S. Dalmia Nagar, District Rohtas.

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Jitendra Prasad Singh
For the Opposite Party/s : Mr. ARVIND KUMAR PANDEY(APP)

CORAM: HONOURABLE MR. JUSTICE ARVIND SRIVASTAVA
C.A.V. JUDGMENT

Date : 14-12-2017

Heard learned counsels for the parties.

Petitioners, by means of this application under section 482 of the Code of Criminal Procedure, have invoked the inherent jurisdiction of this Court with prayer to quash the order dated 19.07.2013 passed by the Judicial Magistrate, 1st Class, Dehri in Complaint Case No. 173 of 2012/ Tr. No. 2442 of 2013, whereby and whereunder cognizance has been taken against the petitioners for the offence under section 498A of the Indian Penal Code.



Learned counsel appearing for the petitioners submits that no offence against these petitioners is disclosed and the present prosecution has been initiated with *mala fide* intention for the purposes of harassment. Petitioners are the husband and other in-laws of the complainant. They have committed no offence at all but they have been made accused in this case on basis of concocted and baseless story. Nothing specific has been alleged against any of the petitioners. It has been alleged by the complainant that she was ousted by the petitioners from her matrimonial home on 30.07.2010, however she has lodged the present complaint on 04.09.2012. As a matter of fact, the petitioner no. 1, being the husband, had filed Matrimonial Case No. 536 of 2011, under section 9 of the Hindu Marriage Act, before the Family Court, Faizabad for restitution of conjugal rights, and only thereafter and in retaliation thereto, the complainant has filed the present complaint. Petitioner no. 1 and other petitioners, being her in-laws, are still ready to keep the complainant with full honour and dignity, but it is the complainant who does not want to live with these petitioners.

Considering the materials available on record and the facts of the case, this Court finds substance in the submissions advanced on behalf of the petitioners. There is no



explanation for the delay in lodging the complaint petition as she was ousted from her matrimonial home on 30.07.2010 and the present complaint was filed on 04.09.2012. Although it is stated in paragraphs 16 & 17 of the complaint petition that before filing the complaint, complainant approached the concerned Police Station and thereafter the concerned Superintendent of Police, but no document has been annexed in support thereof. Further, nothing specific has been alleged against any of these petitioners rather the allegations are general and omnibus in nature. The Hon'ble Supreme Court has held in various judgments reported in *A.I.R. 2010 S.C. 3363 (Preeti Gupta & Anr. Vs. State of Jharkhand)*, (2014) 13 SCC 567 (*Swapnil & Ors Vs. State of M.M.*), 2013(1) P.L.J.R SC 11 (*Geeta Mehrotra & Anr. Vs. State of U.P. & Anr.*) and (2009) 10 SCC 184 (*Neelu Chopra & Anr. Vs. Bharti*) that in cases where entire family have been made accused with general and omnibus allegation and there is nothing specific such prosecution may be quashed. Moreover, the present complaint has been filed after filing of the matrimonial case by the petitioner for restitution of conjugal rights, which in terms of the judgment rendered by the Hon'ble Supreme Court in the case of *State of Haryana Vs. Bhajan Lal*, reported in 1992 Supp (1)



SCC 335 is a malicious prosecution. Further, the matter was sent for mediation where the opposite party no. 2 did not choose to appear.

In view of the discussions made above, the order dated 19.07.2013 passed by the Judicial Magistrate, 1st Class, Dehri in Complaint Case No. 173 of 2012/ Tr. No. 2442 of 2013, whereby and whereunder cognizance has been taken against the petitioners for the offence under section 498A of the Indian Penal Code is not sustainable in the eye of law and is, hereby, quashed.

The application, accordingly, stands allowed.

(Arvind Srivastava, J)

mcv/-

AFR/NAFR	AFR
CAV DATE	15.09.2017
Uploading Date	15.12.2017
Transmission Date	15.12.2017

