

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.38391 of 2014

Arising Out of PS.Case No. -246 Year- 2011 Thana -MADHUBANI COMPLAINT CASE District-
MADHUBANI

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1. Kamini Devi @ Arti Devi @ Arti Rai, Wife of Sri Ballav Prasad Rai
2. Ballav Prasad Rai, Son of Late Rajendra Rai
3. Jyoti Kumar Rai @ Jyoti Kuamr, Son of Sri Ballav Prasad Rai
4. Chandeshwar Kumar @ Moti, Son of Sri Ballav Prasad Rai
All resident of village - Kharaitha P.S. - Parbatta, District- Khagaria.

.... Petitioner/s

Versus

1. The State of Bihar
2. Chandini Devi Wife of Sri Chandeshwar Rai and D/o Bhubneshwar Sharma
Resident of Village Parsa, P.S. - Jai Nagar, District - Madhubani.

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Dhananjay Kumar Pandey, Advocate.

For the State : Mr. Md. Mushtaque Alam, APP

For the OP NO. 2 : Mr. A.K.Thakur, Advocate.
Mr. Md. Imteyaz Ahmad, Advocate.
Mr. Ravi Ranjan, Advocate.

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CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR

ORAL JUDGMENT

Date: 20-11-2017

Heard learned counsel for the petitioner and learned
counsel for the State as well as learned counsel for the O.P. No. 2.

2. Petitioners seek quashing of cognizance order dated
01.08.2011 passed by the Judicial Magistrate, 1st Class, Madhubani in
Complaint Case No. 246 of 2011 thereby taking cognizance under
Section 498A of I.P.C. against the petitioners.

3. A short fact giving rise to the case is that complainant
after solemnization of her marriage in the month of June, 2010 with



Chandeshwar Kumar Rai (Petitioner No. 4) started living in matrimonial home but husband and other accused persons further started making demand Rs. 2 lacs in dowry as well as a motorcycle and mother-in-law and others used to torture her, ultimately on 26.02.2011 she was ousted from the matrimonial home.

4. Learned counsel for the petitioners submits that fact is that complainant is suffering from mental illness before her marriage, so the husband has filed a divorce suit which is pending in the Family Court, Madhubani and the order dated 12.01.2012 of the Family Court (Annexure-3) indicates that a Medical Board was constituted to examine her mental condition and was found suffering from Bipolar Affective Disorder with Psychotic features.

5. Learned counsel appearing on behalf of the complainant submits that due to torture, she has been suffering from such mental illness and there is no material to show that she was suffering from such disease prior to her marriage and the trial is still continuing in matrimonial suit.

6. Having considered the rival submissions and on perusal of record, the Court finds that allegation of making demand of dowry and torture in that connection is specific only against petitioners no. 1 and 4, mother-in-law and her husband but not against petitioner no. 2 and 3, who are father and brother of the husband of



the complainant. There is only casual reference of their names in the complaint and no specific allegation of assault or making any demand of dowry is levelled against them. So, order taking cognizance dated 01.08.2011 and subsequent criminal proceeding with respect to petitioners no. 2 and 3 namely Ballav Prasad Rai, father-in-law and Jyoti Kumar Rai, brother of the husband, is hereby quashed. However, as already observed, *prima facie* case under Section 498A of I.P.C. is made out against the petitioner no. 1 mother-in-law and petitioner no. 4 the husband, so the criminal proceeding against them will continue in accordance with law.

(Arun Kumar, J)

Sujit/-

AFR/NAFR	NAFR
CAV DATE	NA
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