

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.13298 of 2011

Arising Out of Complaint Case No. – C243 Year-2008 District- BANKA

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Sri Sachindra Nath Prasad son of Rajendra Prasad, resident of Mohalla- Kamal Niwas, Dharamganj, P.O. + P.S.- Kishanganj, District- Kishanganj. At present works as Inspector (Ex.), CISF, Airport, New Delhi, P.O. and District New Delhi.

.... Petitioner

Versus

1. The State of Bihar
2. Sharda Devi wife of Sachindra Prasad D/o. Shri Gouri Shankar Sah, resident of village- Aliganj, P.S. and District- Banka.

.... Opposite Parties.

with

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Criminal Miscellaneous No. 19217 of 2010

Arising Out of Complaint Case No. – C243 Year-2008 District- BANKA

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1. Rajendra Prasad S/O Late Kamal Sahu
 2. Ram Khishowri @ Ram Kishori Gupta W/O Rajendra Prasad
 3. Manidra Prasad S/O Rajendra Prasad
 4. Paliavi Devi @ Palavi Kumari Devi W/O Manidra Prasad.

All resident of village- Dharamganj, P.O. And P.S. Kishanganj, Distt. Kishanganj

.... Petitioners

Versus

1. State Of Bihar
2. Sharda Devi W/O Sachindra Prasad, D/O Shri Gouri Sankar Sah R/O Vill. Aliganj, P.S. And Distt. Banka

.... Opposite Party/s

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Appearance :

(In Cr.Misc. No.13298 of 2011)

(In Cr.Misc. No.19217 of 2010)

For the Petitioner/s : Mr. Pankaj Kumar Sinha, Advocate

Mr. Diwakar Sinha, Advocate

For the State : Mr. Jharkhadi Upadhyay, APP



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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 03-10-2017

These two applications under Section 482 of the Code of Criminal Procedure (for short 'Cr.P.C.') have been filed for quashing the order dated 11.07.2008 passed by the learned Sub-Divisional Judicial Magistrate, Banka in Complaint Case No. C-243/2008 by which the petitioners have been summoned to face trial for the offences punishable under Sections 498-A and 379 of the Indian Penal Code and Section 4 of the Dowry Prohibition Act, 1961.

2. In Cr. Misc. No. 13298 of 2011, the petitioner is the husband of the complainant whereas in Cr. Misc. No. 19217 of 2010, the petitioners are father-in-law, mother-in-law, brother-in-law and sister-in-law respectively.

3. The case of the complainant is that she was married to petitioner Sachindra Nath Prasad at Banka on 11.05.2005. A complaint was made by the accused persons regarding inadequate gifts given at the time of marriage. Her father stated that he had given gift as per his capacity and is unable to fulfill their further demand. Since then, the accused persons started subjecting her to cruelty. Her further case is that when her father and brother went for *bidai* after about one month at Kishanganj, she disclosed about the



harassment being meted out to her at matrimonial home. They tried to persuade the accused persons, but the accused persons were adamant on their demand. Subsequently, she was blessed with a daughter on 7th May, 2006, but the entire medical expenses were borne by her parents at the time of delivery in Tapashwi Hospital, Bhagalpur. She alleged that her husband, father-in-law and mother-in-law were instrumental throughout in subjecting her to cruelty for non-fulfilment of demand of dowry. She further alleged that her husband took her to Delhi and mercilessly beat her. He said that he is a police inspector and the police would not go against him. Ultimately, in 27th December, 2006, she was driven out of her matrimonial house.

4. Assailing the impugned order taking cognizance of the offence, Mr. Pankaj Kumar Sinha, learned counsel for the petitioners submitted that the allegations made in the complaint are false. The complaint has been instituted due to matrimonial discord and incompatibility between the parties. He submitted that even otherwise, the allegations are quite vague and general in nature and so far as the petitioners Manindra Prasad and Paliavi Devi are concerned, there is no whisper against them in the complaint. They have been summoned merely because they have been named as accused in the complaint. He submitted that in any case, cognizance



could not have been taken against them. He submitted that even otherwise, the order taking cognizance against the petitioners Rajendra Prasad and Ram Kishori Gupta is also bad as they have been made accused because they are parents of the husband of the complainant.

5. Despite valid service of notice, neither the complainant has appeared in person nor any lawyer appointed by her has appeared before this Court to contest the matter.

6. Mr. Jharkhandi Upadhyay, learned Additional Public Prosecutor for the State submitted that summoning order is based on the basis of inquiry conducted by the learned Sub-Divisional Judicial Magistrate and the defence of the accused on merits of the complaint cannot be made a ground for quashing summoning order at the initial stage.

7. I have heard learned counsel for the petitioners and learned counsel for the State and perused the record.

8. It would be manifest from the impugned order dated 11.07.2008 that apart from the complainant, three witnesses were examined in course of inquiry conducted under Section 202 of the Cr.P.C. It would further appear that from the allegations made in the complaint that though there is allegation of demand of dowry and subjecting the complainant to cruelty against the husband, father-in-



law and mother-in-law, there is no specific allegation of either demand of dowry or subjecting the complainant to cruelty for non-fulfillment of demand of dowry as against petitioners Manidra Prasad and Paliavi Devi. No specific role with regard to demand of dowry and cruelty has been made against them.

9. It would be manifest to note here that the Supreme Court in **Arnesh Kumar vs. State of Bihar & Anr. [(2014) 8 SCC 273]**, **Preeti Gupta & Anr. vs. State of Jharkhand & Anr. [AIR 2010 SC 3363]**, **Neelu Chopra & Anr. vs. Bharti [AIR 2009 SC (supp.) 2950]** and **Kans Raj vs. State of Punjab & Ors. [AIR 2000 SC 2324]**, has expressed its concern with regard to false implication of relatives of husbands in the cases under Section 498-A of the Indian Penal Code. The Supreme Court has held that the tendency of false implicating even those relatives of husbands, who live separately and in different cities, is also growing.

10. Applying to the ratio laid down by the Supreme Court in aforementioned cases, since there is no specific allegation against the petitioners Manidra Prasad and Paliavi Devi @ Palavi Kumari Devi, who are brother-in-law and sister-in-law of the complainant, they should not be made to undergo rigor mole of a criminal trial. Allowing the trial to proceed against them would be a travesty of justice and an abuse of the process of the court.



11. In that view of the matter, impugned summoning order dated 11.07.2008 passed by the learned Sub-Divisional Judicial Magistrate, Banka in Complaint Case No. C-243/2008 so far as petitioner no. 3 Manidra Prasad and petitioner no. 4 Paliavi Devi @ Palavi Kumari Devi (in Cr. Misc. No. 19217 of 2010) are concerned, is set aside. Cr. Misc. No. 19217 of 2010 is allowed in part.

12. Summoning order in respect of rest of the petitioners does not suffer from any illegality. In that view of the matter, Cr. Misc. No. 19217 of 2010 in respect of petitioner no. 1 Rajendra Prasad and petitioner no. 2 Ram Khishowri @ Ram Kishori Gupta and Cr. Misc. No. 13298 of 2011 are dismissed.

(Ashwani Kumar Singh, J.)

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AFR/NAFR	NAFR
CAV DATE	NA
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