

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.38737 of 2011

Arising Out of PS.Case No. -0 Year- null Thana -null District- BEGUSARAI

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1. Bishundeo Mishra, son of late Tamol Mishra
 2. Dilip Kumar Mishra @ Dilip Mishra, son of Bishundeo Mishra
 3. Guriya Devi @ Archana Mishra, W/o Dilip Mishra
 4. Usha Mishra, W/o Arvind Mishra.
All resident of village- Harrakh, P.S.- Begusarai Town, Distt- Begusarai.
 5. Asha Jha, W/o Pramod Kumar Jha, resident of village- Sanhaula, P.S.-
Sanhaula, District- Bhagalpur.

.... Petitioner/s

Versus

1. The State of Bihar
2. Shabanam Kumari, W/o Binod Mishra, resident of village- Harrakh, P.S.-
Begusarai Town, Distt- Begusarai at present D/o Ram Chandra Mishra, resident
of village- Sabour, P.S.- Barauni, District- Begusarai.

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Dr. Amrendra Kumar, Advocate.
Mr. Ravi-S-Pankaj, Advocate.
For the State : Mr. Ajay Kumar No. 1, A.P.P.

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CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR

ORAL JUDGMENT

Date: 03-10-2017

Heard learned counsel for the petitioners and learned
counsel for the State.

2. The petitioners have filed this quashing application
under Section 482 of the Code of Criminal Procedure for setting aside
order dated 11.05.2011 passed by the Judicial Magistrate, 1st Class,
Begusarai in Complaint Case No. 2012C of 2010 whereby he has
taken cognizance of offence against the petitioners under Section
498A of the Indian Penal Code directing for issuance of summons to
stand on trial in the case.



3. The petitioners are accused in the aforesaid complaint lodged by Shabnam Kumari, O.P. No. 2, against father-in-law and others excluding husband.

4. Brief fact, as stated in complaint, is that complainant's marriage was solemnized in the year 1991 with Vinod Mishra, son of Kishundeo Mishra (petitioner No. 1). The family was a joint family but after marriage accused persons started making demand of Rs. 50,000/- cash and a motorcycle in dowry and used to torture her in that connection. It is alleged that her husband is a lawyer by profession and he always used to protest such conduct of his family members and lost his mental balance 7-8 years back and on 10.06.2010, all accused, being unanimous, driven her out along with her children from matrimonial home.

5. Learned counsel for the petitioners submits that infact marriage of the complainant was solemnized with her husband approximately 20 years back, even the eldest daughter was married in year 2009 so there is no question of any further demand of dowry and torture and there is no allegation that at the time of marriage any demand of dowry was made. He submits that peculiar fact of case is that husband is not made accused by the wife/complainant because of the reason that there was no any torture rather complaint is filed with ulterior motive to take personal vengeance for the reason that



petitioners no. 1 to 4 have filed a partition suit being Partition Suit No. 38 of 2010 for partition of the joint property in which husband of the complainant, son of the petitioner no. 1, is one of the defendants. There is neither any specific allegation of overt act committed by the accused persons relating to torture and harassment, nor any specific allegation of such act is mentioned in the complaint.

6. None appears on behalf of the O.P. No. 2. Learned counsel for the State supports the impugned order.

7. Having considered the rival submissions and on perusal of record, the Court finds that allegation of demand of further dowry is alleged against the petitioners, who are father-in-law, brother of the husband, married *Nanads* and wife of the brother of the husband but there is no any allegation against the husband, so he is also not an accused in this case. There is complete omission of any specific overt act or specific act of torture or harassment committed by the petitioners; even married *Nanads* (petitioners no. 4 and 5) have been made accused in this case. It is also reflected that the petitioners no. 1 to 4 have filed Partition Suit No. 38 of 2010, being plaintiffs, in the case in which the husband of the complainant is one of the defendants and present complaint is filed after expiry of a decade since the marriage, so existence of civil litigation is apparent in the shape of partition suit in between the petitioners no. 1 to 4 and the



husband of the complainant.

8. so the present complaint appears to have been filed by the complainant to take personal vengeance in order to settle the score in civil dispute, hence order taking cognizance dated 11.05.2011 passed by the Judicial Magistrate, 1st Class, Begusarai in Complaint Case No. 2012C of 2010 and subsequent criminal proceeding against all the petitioners is hereby set aside.

9. The application stands allowed.

(Arun Kumar, J)

Sujit/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	07.10.2017
Transmission Date	07.10.2017

