

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.42342 of 2011

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

=====

1. Md. Anwar Akhtar, son of Md. Aiyub Quraishi

2. Md. Aiyub Quraishi, son of late Md. Hanif

3. Sabra Khatoon, wife of Md. Aiyub Quraishi

All resident of Mohalla- Pokhrapar, Piro, P.S.- Piro, District- Bhojpur.

.... Petitioner/s

Versus

1. The State of Bihar

2. Hashmat Ara, wife of Anwar Akhtar, daughter of Md. Umar Quraishi, resident of mohalla- Pokhrapar, Piro, P.S.- Piro, District- Bhojpur.

At present residing at village and P.O. Raheemabad, P.S. Bangra (Gajpur), Distt. Samastipur.

.... Opposite Party/s

=====

Appearance :

For the Petitioner/s : Mr. A.K. Chandra, Advocate.

For the Opposite Party/s : Mr. B. Ram, A.P.P.

=====

CORAM: HONOURABLE MR. JUSTICE SANJAY PRIYA

ORAL JUDGMENT

Date: 03-10-2017

1. This application under Section 482 of the Code of Criminal Procedure has been filed for quashing the order dated 14.07.2010 passed by the learned Sub Divisional Judicial Magistrate, Samastipur, in Complaint Case No. 1817 of 2009 by which the learned Magistrate after holding enquiry has found *prima facie* case against the petitioners and other four accused persons for the offences under Section 498A and 323 of the Indian Penal Code.

2. As per complaint petition, the complainant was married with petitioner No. 1 in the year 2005 under Muslim rites and customs. After marriage she was tortured in her sasural due to non-fulfillment of demand of dowry. She was not taken proper care by the



accused persons (petitioners) and ultimately, she was ousted from her matrimonial home. She was blessed with a male child who is three years old. It is alleged that she was continuously being tortured due to non-fulfillment of demand of dowry, as a result of which, she seriously got ill. The father of the complainant took her to Patna where she was treated by Dr. S.N. Mishra.

3. Heard learned counsel for the petitioner and learned counsel for the State.

4. The complainant was examined on Solemn Affirmation and statement of three other witnesses was also recorded. The court below has after looking into the allegation in the complaint petition and statement of three witnesses recorded during enquiry as well as Solemn Affirmation of the complainant, found *prima facie* case against these petitioners for the offences under Sections 498A and 323 of the Indian Penal Code.

5. The learned counsel for the petitioners has submitted that the husband of the complainant (petitioner No. 1) has filed a petition for restitution of conjugal rights, but the opposite party No. 2 did not appear. The petitioners also tried several times to keep the opposite party No. 2 (complainant) but she was not ready to live with them. He has pointed out Annexures-3 and 4 which are '*Sanha*' filed before the Piro Bhojpur P.S. and Informatory petition filed before the Sub Divisional Officer, Bhojpur, on 12.07.2009 and 18.08.2009 respectively.

6. The entire lower court record has been received in this



case. From perusal of the lower court record, it appears that the complainant in her Solemn Affirmation has fully supported the case. The other witnesses have also supported the case of the complainant in their statement during enquiry.

7. The court below is only required to see *prima facie* case at the time of holding enquiry on the basis of allegation made in the complaint petition and the statement of witnesses recorded during enquiry including the Solemn Affirmation of complainant.

8. Therefore, this Court does not find any illegality in the impugned order.

9. This Criminal Miscellaneous application is accordingly dismissed.

10. The petitioners are however given liberty to raise all the points as raised in this application in the court below at the time of framing of charge which shall be considered by the court below in accordance with law without being prejudiced by this order.

(Sanjay Priya, J)

S.Ali/-

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	13/10/2017
Transmission Date	13/10/2017

