

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.55671 of 2015

Arising Out of PS.Case No. -28 Year- 2015 Thana -MAHILA PS District- JEHANABAD

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1. Yasmin Khatoon, W/o Md. Ahmad Raza, R/o Mohalla - Lal Kothi Danapur Cant, P.S. Danapur, Distt. - Patna
 2. Shabana Praween, W/o Asif Iqbal, R/o Mohalla - Harakh, P.S. Begusarai Town, Distt. - Begusarai
 3. Zaibun Nisha, W/o Md. Murtaza Hussain, R/o Mohalla - Panch Mahla, P.S. + Distt. - Jahanabad

.... Petitioners

Versus

1. The State of Bihar
2. Shagufta Praween, W/o Md. Imteyaz Ahsan, R/o Mohalla - Panchmahla, P.S. + Distt. - Jahanabad, A/P vill. - Erkhi, P.S. + Distt. - Jahanabad

.... Opposite Parties

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Appearance :

For the Petitioners	:	Mr. Umakant Shukla, Advocate Mr. Amrendra Kr. Singh No.1, Advocate Mr. Ashailendra Kr. Singh, Advocate
For the State	:	Mr. Choubey Jawahar, APP
For O.P. No.2	:	Mr. Kanhaiya Prasad Singh, Sr. Advocate Mr. Jawed Gaffar Khan, Advocate

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CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR
ORAL JUDGMENT
Date: 03-11-2017

Heard learned counsel for the petitioners, learned Additional Public Prosecutor for the State and the learned counsel appearing on behalf of opposite party no.2.

2. The petitioners invoking the inherent jurisdiction of this Court by filing this quashing application under Section 482 Cr.P.C. seek quashing of order dated 23.09.2015, passed by learned Chief Judicial Magistrate, Jehanabad in connection with Jehanabad (Mahila) P.S. Case No.28 of 2015 thereby taking cognizance of the offence under Sections 498A, 341, 323 and 307/34 of the Indian Penal Code as well as under Section 34 of the Dowry Prohibition Act.



3. A short fact giving rise to the case is that a written information was filed by the informant Shagufta Praween alleging therein that the accused persons always used to torture and harass her to realize further demand of dowry after solemnization of her marriage on 17.11.2011. It is alleged that on 01.04.2015, all accused persons after pouring kerosene oil over her body locked her in a room and on alarm raised by her, neighbours turned up thereafter they informed her brother and she was rescued only after arrival of the informant's brother hence the case was filed.

4. Learned counsel for the petitioners submits that no specific overt act is alleged against these three petitioners stating what specific overt act was done by them, moreover allegation also appears improbable that after pouring kerosene oil over her body why the petitioners will lock the informant and confine her in a room in spite of setting fire over the body. There is matrimonial discord between the informant and her husband and all family members have been implicated in this case. Even petitioner no.1, Yasmin Khatoon, is a married *nanad*, rather she was married much before the alleged occurrence and living at distant place in Patna, petitioner no.2 is *gotni*, wife of the elder brother of the informant's husband and she also resides with her husband at Begusarai at different place however, learned counsel for the petitioners concedes that petitioner no.3, the



mother-in-law stays there but she is very old lady 70 years of age. Learned counsel for the petitioners places reliance in the case of Preeti Gupta vs. State of Jharkhand, reported in 2010(4) PLJR 36(SC) and Geeta Mehrotra vs. State of U.P., reported in 2013(1) PLJR 10 (SC) and submits that now a days it is a general tendency to implicate all the relatives of the husband even live distantly and has no concern with day to day matrimonial affairs of the husband and wife.

5. Contrary to that the learned counsel appearing on behalf of the informant as well as the State submits that there is allegation against these petitioners also that they used to make demand of dowry and there is also omnibus allegation against them that they poured kerosene oil over the body of the informant on 01.04.2015 and this allegation was supported by the informant in her statement recorded under Section 164 Cr.P.C.

6. Having considered the contrary submissions of learned counsel of both sides and on perusal of the records, this Court finds that it is an admitted position that petitioner no.1 is the married *nanad* and petitioner no.2 is the wife of the elder brother of the informant's husband. It is also apparent that both live separately at different places and not at the place of occurrence. Moreover, there is no specific allegation even in the FIR that in dowry what was specifically demanded, even the amount of money is not mentioned. As far as the



allegation dated 01.04.2015 is concerned, there is only general and omnibus allegation relating to the presence of these petitioners and no specific overt act is alleged against them. In the case of Preeti Gupta (supra), the Hon'ble Supreme Court held as such in paragraph 30 of the judgment:-

“30. It is a matter of common experience that most of these complaints under Section 498-A IPC are filed in the heat of the moment over trivial issues without proper deliberations. We come across a large number of such complaints which are not even bona fide and are filed with oblique motive. At the same time, rapid increase in the number of genuine cases of dowry harassment are also a matter of serious concern.”

7. Further it is observed in paragraph 33 of the judgment that “the tendency of implicating husband and all his immediate relations is also not uncommon. At times, even after the conclusion of criminal trial, it is difficult to ascertain the real truth. The courts have to be extremely careful and cautious in dealing with these complaints and must take pragmatic realities into consideration while dealing with matrimonial cases. The allegations of harassment of husband's close relations who had been living in different cities and never visited or rarely visited the place where the complainant resided would have an entirely different complexion. The allegations of the complaint are required to be scrutinized with great care and circumspection.” Further in the same paragraph it is observed that



“Experience reveals that long and protracted criminal trials lead to rancour, acrimony and bitterness in the relationship amongst the parties. It is also a matter of common knowledge that in cases filed by the complainant if the husband or the husband’s relations had to remain in jail even for a few days, it would ruin the chances of amicable settlement altogether. The process of suffering is extremely long and painful.”. So considering the background of the present case and applying the legal principle as enunciated in this decision as well as in the case of Geeta Mehrotra (supra), the Court finds that petitioner no.1 is the married *nanad* living distantly at distant place such is the position with respect to petitioner no.2, the wife of elder brother of the informant’s husband also living at different place and as earlier observed there is only omnibus allegation only stating name of these two regarding their presence at the place of occurrence, there is ambiguity relating to the nature and quantum of the demand of dowry after the marriage, so applying the principles of these two cases decided by the Apex Court, the entire criminal proceeding against Yasmin Khatoon, petitioner no.1 and Shabana Praween, petitioner no.2 inclusive of the cognizance order dated 23.09.2015, passed by learned Chief Judicial Magistrate, Jehanabad in connection with Jehanabad (Mahila) P.S. Case No.28 of 2015 only with respect to these petitioners is hereby quashed.



8. However, as far as petitioner no.3, Zaibun Nisha is concerned, she is the mother-in-law and was admittedly residing with the informant and her husband at the relevant point of time, so with respect to her the prayer of quashing cognizance order and entire criminal proceeding against her stands dismissed.

9. The quashing application stands disposed of in the aforesaid terms.

(Arun Kumar, J.)

S.Kumar/-

AFR/NAFR	NAFR
CAV DATE	NA
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