

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.2151 of 2015

Arising Out of PS.Case No. -20 Year- 2014 Thana -MAHILA P.S. District- MADHUBANI

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1. Shamshe Alam @ Nirale, son of Md. Ashique @ Budhan
 2. Shabnum Praveen @ Sabbo, D/o Md. Ashique @ Budhan
 3. Chandni Parveen, D/o Md. Ashique @ Budhan
 4. Md. Shamse Alam @ Chhote, son of Md. Amirul
 5. Shahjahan Begum, wife of Md. Shamse Alam, All Sl. No.1 to 5 are resident of village- Berhai Dih, P.S.- Sadar, District- Darbhanga.
 6. Noor Jahan begum @ Baby, wife of Md. Zahid, resident of village- Taarsarai, P.S.- Darbhanga, District- Darbhanga.

.... Petitioners

Versus

1. The State of Bihar
2. Shabana Khatoon, wife of Md. Noor Alam @ Pappu, resident of village- Berhai Dih, P.S.- Sadar, District- Darbhanga at present D/o Md. Sami Ahamad, resident of village – Hasanapur, P.S.- Bisfi, District- Madhubani.

.... Opposite Parties

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Appearance :

For the Petitioners	:	Mr. Ajay Kumar Thakur, Advocate Mr. Ravi Ranjan, Advocate Smt. Babita Kumari, Advocate
For the State	:	Mr. Md. Mushtaque Alam, A.P.P.

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CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR

ORAL JUDGMENT

Date: 30-08-2017

Heard learned counsel for the petitioners and learned counsel for the State however despite receipt of notice opposite party no.2 has not appeared.

2. The petitioners have preferred this application under Section 482 of the Code of Criminal Procedure, 1973 for setting aside criminal proceeding initiated against them inclusive of cognizance order dated 23.7.2014 passed by S.D.J.M., Madhubani in Mahila P.S. Case No.20 of 2014, thereby taking cognizance under Sections 498A,



323, 379, 313, 427 of Indian Penal Code and under Sections 3 and 4 of Dowry Prohibition Act.

3. The F.I.R. was lodged after sending the complaint under section 156(3) of the Cr.P.C. by C.J.M., Madhubani. The facts stated in the complaint is that the complainant was married with Md. Noor Alam on 7.1.2012 but after marriage her husband, father-in-law, mother-in-law and Nanads started making demand of Rs.1,00,000/- and in that connection they used to torture and assault her. Five months after marriage her husband went to Saudi Arabia for doing job but other accused continued torturing her and due to assault her pregnancy got terminated ultimately she was ousted from the matrimonial home.

4. Learned counsel appearing on behalf of the petitioners submits that the petitioner no.1 is brother of the husband of the complainant, petitioner nos.2 and 3 are un-married Nanads, petitioner no.5 is the married Nanad, petitioner no.4 is husband of the Nanad and petitioner no.6 is also a married Nanad. Married Nanads and their husband reside at a different place. The allegation in the complaint against these petitioners are general and sweeping in nature and it contains no specific allegation mentioning any specific date of assault or torture. The police on conclusion of the investigation not finding any evidence relating to involvement of these petitioners did



not sent up them for trial. Charge sheet was submitted only against the husband, father-in-law and mother-in-law but the learned S.D.J.M. has taken cognizance of the offence against these petitioners also referring paragraph of the case diary but these paragraphs do not contain any specific evidence against them except general and sweeping statement of relatives of the complainant. Learned counsel has placed reliance on two decisions, **Preeti Gupta & Anr. v. State of Jharkhand & Anr.** reported in **A.I.R. 2010 S.C. 3363** and **Geeta Mehrotra and Anr. V. State of U.P. and Anr.** Reported in **A.I.R. 2013 S.C. 181.**

5. Contrary to that the learned counsel appearing on behalf of the State supports the impugned order.

6. Having considered rival submissions and on perusal of record, the Court finds that there is no material against these petitioners except general, sweeping and bald allegation of demanding dowry and torture in that connection. There is complete absence of specific allegation against these petitioners, who are married and unmarried Nanads, husband of one of the Nanads and brother of the husband except casual reference of their names in the F.I.R. The Supreme Court, in case of **Geeta Mehrotra and Anr. v. State of U.P. and Anr. (Supra)** with respect to the facts of that case has observed as follows :-



“19. Coming to the facts of this case, when the contents of the FIR is perused, it is apparent that there are no allegations against Kumari Geeta Mehrotra and Ramji Mehrotra except casual reference of their names who have been included in the FIR but mere causal reference of the names of the family members in a matrimonial dispute without allegation of active involvement in the matter would not justify taking cognizance against them overlooking the fact borne out of experience that there is a tendency to involve the entire family members of the household in the domestic quarrel taking place in a matrimonial dispute specially if it happens soon after the wedding.”

7. In the present case also since there is no specific allegation against petitioners except casual reference of name finding place in the F.I.R. and entire family members including married, unmarried Nanads and their husband have been implicated in this case, so the entire criminal proceeding inclusive the cognizance order dated 23.7.2014 passed by S.D.J.M., Madhubani in Mahila P.S. Case No.20 of 2014 only with respect to the petitioners is quashed.

8. The application stands allowed.

(Arun Kumar, J)

N.H./-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	13-09-2017
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