

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Writ Jurisdiction Case No.430 of 2015

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

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1. Punam Bharati, wife of Sri Nagendra Prasad
 2. Nagendra Prasad @ Nagendra Kumar, son of Late Bhola Sah, resident of - Daulatganj, Chapra, Distt.- Saran
 3. Nutan Bharati, wife of Sri Deepak Prasad
 4. Deepak Prasad @ Deepak Kumar, Son of Sri Sachchidanand Prasad, resident of- Near S.B.I. Bazar Branch, Sri Ram Nagar, Mohari, Distt. Champaran
 5. Seema Bharati, Wife of Sri Rakesh Shraff
 6. Rakesh Shraff, Son of Late Heera Lal Shraff, resident of- Fatehpur, Near Temple, Muzaffarpur
 7. Garib Nath @ Garib Nath Gupta, son of Late Ram Lakhan Sah, resident of Purani Bazar, Muzaffarpur
 8. Pancham Prasad, Son of Late Ram Lakhan Sah, resident of Purani Bazar, Muzaffarpur
 9. Suneeta Devi, Wife of Sri Ajay Kumar, resident of- Aamgola Road, Brahmputra Gali, Muzaffarpur

.... Petitioner/s

Versus

1. The State of Bihar, through Principal Secretary, Department of Home Affairs, Government of Bihar, Patna
2. The Director General of Police, Bihar, Patna
3. The Senior Superintendent of Police, Patna
4. The Officer in Charge, Khajekalan Police Station, Patna City, Patna
5. Kamini Kumari, Daughter of Sri Abhay Krishna, resident of- Begam Ki Haveli, P.S.- Khajekalan, Distt. Patna.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Raj Shekhar, Adv.
For the Respondent nos.1to4 : Mr. Brajkishore Prasad, AC to SC-5
For the Respondent no.5 : Mr. Ranjit Prasad, Adv.

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CORAM: HONOURABLE MR. JUSTICE BIRENDRA KUMAR

ORAL JUDGMENT

Date: 04-08-2017

Heard learned counsel for the parties.

The petitioners are accused in connection with
Khajekalan P.S. Case No.98 of 2004 registered under Sections 498A,
494, 406 and 120B of the Indian Penal Code as well as under Sections



3 and 4 of the Dowry Prohibition Act. The petitioners are relations of the husband. Initially, the petitioners prayed for quashment of the First Information Report of the case on the ground that the allegation is not specific and vague one and the fact that tendency has developed to rope the family members in every case of dispute between the husband and wife.

Learned counsel for the petitioners contended that on 26.05.2005 the parties entered into a compromise and a written compromise petition was filed before the learned court below. However, no order was passed as the case was still under investigation. On 18.04.2017, the officer in-charge of Khajekalan police station filed a petition before the learned court below, vide order as contained in Annexure-5, that the earlier I.O. did not submit the case diary etc. after closure of the investigation of the case. The earlier I.O. has already retired from service. In the circumstances, prayer for further investigation was made. The learned court below refused the prayer by order dated 18.04.2017 on the ground that since the investigation has not been completed or report submitted, therefore, there is no need to allow the prayer for further investigation of the case. Ultimately, the police submitted charge-sheet and cognizance was taken on 21.04.2017.

Thereafter, in reply to the counter affidavit, the



petitioners challenged the continuance of the criminal proceeding on the ground of abuse of the process of the Court as cognizance was barred by limitation under Section 468 Cr.P.C. Contention of the petitioners is that the maximum punishment applicable against the petitioners (Section 494 IPC is not applicable against the petitioners and there is no allegation under Section 3 of the Dowry Prohibition Act of giving or taking dowry) is three years, as such, cognizance should have been taken within a period of three years.

In the present case, cognizance has been taken much after three years from date of offence dated 23.04.2000 to 07.06.2004, without condoning the delay, hence, continuance of the cognizance order and criminal proceeding would amount to an abuse of the process of the Court.

Learned counsel for the respondents submits that there is allegation against the petitioners also of demand of dowry and torture for the same in the First Information Report and at this stage when the charge-sheet has already been submitted, after completion of investigation, the writ Court should not interfere with the criminal proceeding.

I find substance in the submissions of the learned counsel for the petitioners that First Information Report makes out a vague allegation of demand of dowry and torture against the



petitioners. I further find that initially the parties filed compromise petition in the case which was not accepted probably for the reason that the investigation was pending and the court was expecting final form in the case. Moreover, cognizance of the offences, after expiry of the period of limitation, without condoning the delay, is bad in law. Hence, continuation of the criminal proceeding, in pursuance of First Information Report of Khajekalan P.S. Case No.98 of 2004, would amount to an abuse of the process of the Court.

Accordingly, the entire criminal proceeding against the petitioners, arising out of Khajekalan P.S. Case No.98 of 2004, is hereby quashed and this writ application stands allowed.

(Birendra Kumar, J)

Arvind/-

AFR/NAFR	AFR
CAV DATE	
Uploading Date	08.08.2017
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