

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.18044 of 2014

Arising Out of PS.Case No. -802 Year- 2012 Thana -KATIHAR COMPLAINT CASE District-KATIHAR

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1. Lalita Jha @ Lalita Devi, wife of Birendra Sinha
 2. Mister Sinha @ Mister Kumar Sinha, son of Birendra Sinha
- Both residents of Peon Quarter Officer's Colony Road, P.S.-Sahayak, District-Katihar.
3. Prabhat Chandra Poddar, son of late Prahlad Poddar, resident of Mohalla-Mirchaibari, P.S.-Town, District-Katihar.

.... Petitioner/s

Versus

1. The State of Bihar
2. Smt. Guriya Devi, wife of Mister Sinha, daughter of Sri Ramdeo Ravidas, r/o Peon Quarter, Mirchair Bari, P.S. Town Katihar, Distt. Katihar.

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Ajay Kumar, Advocate.

For the Opposite Party/s : Mr. Shyam Kumar Singh, A.P.P.

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CORAM: HONOURABLE MR. JUSTICE SANJAY PRIYA

ORAL JUDGMENT

Date: 07-11-2017

1. This application under Section 482 of the Code of Criminal Procedure has been filed for quashing the order dated 12.11.2012, passed by the learned Sub Divisional Judicial Magistrate, Katihar, in Complaint Case No. 802(C) of 2012 by which the learned Magistrate after holding enquiry has found *prima facie* case against the petitioners for the offences under Section 498A of the Indian Penal Code and Section 4 of Dowry Prohibition Act.

2. The complainant alleged in the complaint petition that she was maid servant in the house of petitioner No. 1. It is



alleged that petitioner No. 2 namely, Mister Sinha @ Mister Kumar Sinha committed rape with her and assured to perform marriage with her. When the complainant conceived, she informed about the matter to her parents. Thereafter, on 26.03.2012, a Panchayati was held in which the accused persons agreed to perform the marriage of petitioner No. 2 with the complainant, and, ultimately, the marriage took place at B.M.P. Temple, Mirchaibari, Katihar. Subsequently, an affidavit was sworn on 26.03.2007. It is further alleged that parents of the complainant gifted gold and silver ornaments worth Rs.30,000/- to the petitioners. After marriage, the complainant rushed to Delhi with petitioner No. 2 where he worked as Medical Representative. On 28.04.2008, the complainant came back from Delhi and started living in her marital home. The petitioner No. 1 asked the complainant to bring Rs.2,00,000/- more dowry from her parent, otherwise she would not be allowed to remain at her matrimonial home and when the aforesaid demand was not fulfilled, she was subjected to cruelty and was abused by taking her caste name. From the wedlock of petitioner No.2, she was blessed with a male child aged about 4 and ½ years.

3. Heard learned counsel for the petitioners, learned counsel for the opposite party No. 2 and learned counsel for the State.

4. Learned counsel for the petitioners has submitted that earlier one Police case was filed by mother of the complainant



vide Katihar (Sahayak) P.S. Case No. 651 of 2011 for the offence under Sections 376, 504 of the Indian Penal Code and Sections 3(1)(xii) of SC/ST (Prevention of Atrocities) Act, in which, charge sheet has been submitted only against petitioner No. 2. Thereafter, the second complaint has been filed making accused petitioner No. 2 and his family members.

5. Learned counsel for the opposite party No. 2 has submitted that complainant in her Solemn Affirmation and other witnesses during enquiry have supported the case of prosecution.

6. The court below is only required to see prima facie case at the time of holding enquiry.

7. Learned counsel for the petitioners has placed reliance upon case reported in **2015 Cri L.J. – 2031 (Taranmani Prakh Vrs. State of M.P. and Ors.)** and has submitted that question whether complainant has in fact been harassed and treated with cruelty, is a matter of trial.

8. The Solemn Affirmation of the complainant and statement of witnesses have been annexed as Annexure-3 series. From perusal of Solemn Affirmation as well as the statement of witnesses, this Court finds that they all have supported the case of complainant during enquiry.

9. The learned Magistrate is only required to see



prima facie case at the time of enquiry on the basis of allegation made in the complaint and statement of witnesses recorded during enquiry.

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

11. This Criminal Miscellaneous application is accordingly dismissed.

12. The petitioner is given liberty to raise all the points as raised in this Criminal Miscellaneous application 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	AFR
CAV DATE	N.A
Uploading Date	17/11/2017
Transmission Date	17/11/2017

