

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.26390 of 2013

Arising Out of PS.Case No. -1 Year- 2013 Thana -MAHILA P.S. District- KISHANGANJ

=====

Vijay Mantri @ Vijay Kumar Mantri S/O Late Bishabhar Lalji Mantri, resident of
Village- Nemchand Road, Mantri Comlex, Police Station- Kishnaganj, District-
Kishanganj

.... Petitioner

Versus

1. The State Of Bihar
2. Bandana Mantri W/O Ravi Mantri, resident of Village- Loharpatti Road, Police
Station- Kishanganj, District- Kishanganj

.... Opposite Parties.

=====

Appearance :

For the Petitioner/s : Mr. Baxi S.R.P. Sinha, Sr. Advocate
Mr. Satish Kumar Sinha, Advocate
For the State : Mr. Sanjay Kumar, APP

=====

CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 03-04-2017

Heard Mr. Baxi S.R.P. Sinha, learned Senior
Advocate for the petitioner and Mr. Sanjay Kumar, learned
Additional Public Prosecutor for the State.

2. This application under Section 482 of the Code
of Criminal Procedure (for short 'Cr.P.C.') has been filed for
quashing of the order dated 20.04.2013 passed by learned Chief
Judicial Magistrate, Kishanganj in Kishanganj (Mahila) P. S. Case
No. 01 of 2013 by which finding a *prima facie* case to be made out



against the petitioner and one another summonses have been issued.

3. The prosecution case rests on written report of opposite party no. 2 Bandana Mantri submitted to the Station House Officer of Kishanganj (Mahila) Police Station, pursuant to which Kishanganj (Mahila) P. S. Case No. 1 of 2013 dated 19.01.2013 was registered under Sections 498-A, 109, 506, 307, 341, 323/34 of the Indian Penal Code (for short 'IPC') against the petitioner and his younger brother Ravi Mantri. It is alleged in the written report that the informant was married to Ravi Mantri 22 years ago and out of the said wedlock, she has three children. Her husband used to assault her frequently. It is alleged that in this regard, an FIR, vide Kishanganj (Mahila) P. S. Case No. 21 of 2012, was instituted earlier in which her husband Ravi Mantri was remanded to Jail and was later on granted bail on the basis of compromise wherein he had undertaken that he would take care of her in future. However, after coming out of jail, on 19.01.2013 at 7 am, he assaulted her and pushed her on oven as a result of which her *sari* caught fire. She alleged that the petitioner also used to instigate his younger brother Ravi Mantri to subject her to cruelty.

4. On completion of investigation, the police submitted their report under Section 173(2) of the Cr.P.C. and after looking into the materials available on record, the learned



Magistrate, vide order dated 20.04.2013, took cognizance of the offence under Section 498-A/34 of the IPC and summoned the victim's husband Ravi Mantri and the petitioner to face trial.

5. It is submitted by Mr. Baxi S. R. P. Sinha, learned Senior Advocate for the petitioner that from the perusal of the first information report, it would be evident that no specific overtact has been alleged against the petitioner. He submitted that the informant has simply alleged that the petitioner being elder brother used to instigate her husband to subject her to cruelty. He submitted that the admitted case of the informant is that the marriage had taken place 22 years ago. He submitted that the responsibility to maintain a married lady is upon her husband and not upon the husband's elder brother. According to him in view of matrimonial discord and incompatibility between the husband and the wife, the family has been maliciously implicated in the present case.

6. It is relevant to note that despite valid service of notice, opposite party no. 2 has chosen not to appear in the present case.

7. Learned Additional Public Prosecutor conceded that save and except, allegation of abetment against the petitioner, there is no other material against him with the alleged offence of



cruelty meted out to the victim lady.

8. I have heard learned counsel for the parties and perused the record.

9. Having taken into consideration the allegations made in the FIR and the substance of accusation recorded in the police report submitted under Section 173(2) of the Cr.P.C., I find that save and except, a vague allegation of abetment made against the petitioner, there is no other material to connect the petitioner with the alleged offence.

10. It would be relevant to note here that tendency to implicate the family members and distant relatives in a case under Section 498-A of the IPC has repeatedly been deprecated by the Supreme Court.

11. In ***Arnesh Kumar vs. State of Bihar and Anr.*** [(2014) 8 SCC 273], the Supreme Court has observed: “*There is a phenomenal increase in matrimonial disputes in recent years. The institution of marriage is greatly revered in this country. Section 498-A IPC was introduced with avowed object to combat the menace of harassment to a woman at the hands of her husband and his relatives. The fact that Section 498-A IPC is a cognizable and non-bailable offence has lent it a dubious place of pride amongst the provisions that are used as weapons rather than shield by*



disgruntled wives. The simplest way to harass is to get the husband and his relatives arrested under this provision. In a quite number of cases, bed-ridden grand-fathers and grand-mothers of the husbands, their sisters living abroad for decades are arrested”.

12. In ***Preeti Gupta & Anr. vs. State of Jharkhand & Anr. [AIR 2010 SC 3363]***, the Supreme observed: “*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”.*

13. Having taken into consideration the ratio laid down by the Supreme Court in the decisions noted above, when I closely look to the facts of the present case, I find that no specific role has been attributed against the petitioner in commission of the offence alleged. The allegation of abetment made against elder brother of the husband, who is admittedly mother of three children and whose marriage took place twenty two years ago seems to be highly improbable.

14. In the circumstances, I am of the considered opinion that it would be an abuse of the process of law to allow the



prosecution to continue against the petitioner on the basis of a vague and general allegation of abetment made against him. Accordingly, the impugned order dated 20.04.2013 passed by learned Chief Judicial Magistrate, Kishanganj in Kishanganj (Mahila) P. S. Case No. 01 of 2013 so far as the petitioner is concerned, is hereby set aside.

15. The application stands allowed.

(Ashwani Kumar Singh, J.)

Kanchan/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	06.04.2017
Transmission Date	06.04.2017

