

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.30498 of 2013

Arising Out of PS.Case No. -476C Year- 2012 Thana -PATNA COMPLAINT CASE District-
PATNA

- =====
1. Shri Vijendra Kumar @ Vijendra Kumar, s/o Hiramoti Singh
 2. Smt. Tara Devi, w/o Hira Mahto
 3. Nagendra Mahto @ Nagendra Kumar, s/o Hira Mahto
 4. Sangeeta Devi, w/o Nagendra Mahto
 5. Dharmendra Mahto @ Dharmendra Kumar, s/o Hira Mahto
- All resident of village- Sikarpur, P.S.- Shahpur, Distt.- Patna

.... Petitioners

Versus

1. The State of Bihar
2. Smt. Guriya Devi, w/o Vijendra Kr. Mahto, d/o Sri Parmeshwar Mahto resident of village- Sikarpur, P.S.- Shahpur, Distt.- Patna

.... Opposite Party/s

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Appearance :

For the Petitioners : Mr. Binod Prasad Singh, Advocate.
For the State : Mr. J. Upadhyay, A.P.P.

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CORAM: HONOURABLE MR. JUSTICE SANJAY PRIYA

CAV JUDGMENT

Date: 8-03-2017

1. This Cr. Misc. application has been filed against the order dated 26.6.2012 passed by the learned Sub Divisional Judicial Magistrate, Danapur, Patna, in connection with Complaint Case No. 476(C) of 2012, by which the learned Magistrate after enquiry has found prima facie case for the offences punishable under Sections 498A, 323 of the Indian Penal Code and Section 4 of Dowry Prohibition Act against the accused persons (petitioners).

2. The prosecution case as per complaint petition is that the complainant was married with petitioner No. 1 on 11.11.2010 according to Hindu rites and customs. At the time of marriage, the



father of the complainant has given Rs.2,00,000/- cash, golden chain, ring etc. to the father of petitioner No. 1. After marriage, the complainant went to her matrimonial home where she was tortured by her husband and his other family members. The accused persons made demand of Sikri, Fan, Palang and Sofa etc. and for non-fulfillment of aforesaid demand, she was driven out from her matrimonial home. The petitioner No. 1 wanted to perform marriage with another girl.

3. It has been submitted on behalf of the petitioners that they have falsely been implicated in this case. Petitioner No. 1 is always ready to keep the wife i.e. opposite party No. 2, but she does not want to live with him. Petitioner Nos. 2, 3, 4 and 5 are mother-in-law, brothers-in-law (Bhainsur) and sisters-in-laws (Gotni) of the complainant. They have no concern with affairs of petitioner No. 1 and his wife (opposite party No. 2).

4. The learned counsel for the petitioner has relied on a decision reported in **2013 (1) PLJR, 10 (Geeta Mehrotra & Anr. Vrs. State of U.P. & Anr.)** and argued that the order of cognizance is liable to be quashed against them as there is general and omnibus allegation against them. It has further been submitted that there is no cogent evidence that the husband (petitioner No. 1) has committed physical and mental torture with the complainant and performed second marriage.

5. Learned counsel for the opposite party No. 2 and



learned A.P.P. have submitted that all the accused persons have committed physical and mental torture with the complainant and ultimately ousted her from the matrimonial home.

6. In the instant case both husband and wife were called in Chambers for reconciliation. The wife during reconciliation has stated that her husband has performed second marriage and from the second wife, they have a child. But in support of such allegation, she did not file any chit of paper. After talking with both the parties, it is found that there is no chance of reconciliation.

7. From perusal of the allegation in the complaint petition as well as the impugned order, this Court finds that no any justifiable reason has been given by the learned Magistrate for coming to the finding that *prima facie* case for the offences punishable under Sections 498A, 323 of the Indian Penal Code and Section 4 of Dowry Prohibition Act is made out against petitioner Nos. 2 to 5.

8. The Hon'ble Supreme Court in the case of ***Geeta Mehrotra & Anr. Vrs. State of U.P. & Anr.*** reported in **2013 (1) PLJR, 10** has held that continuance of Criminal Proceedings against the accused persons on the basis of general and omnibus allegation is abuse of the process of law.

9. In such circumstances, relying on the decision of ***the Hon'ble Supereme Court*** reported in **2013 (1) PLJR, 10** (***Geeta Mehrotra & Anr. Vrs. State of U.P. & Anr.***) it is held that



continuance of Criminal Proceedings against petitioner Nos. 2 to 5, on the basis of general and omnibus allegation, is abuse of the process of law.

10. Therefore, the order of cognizance dated 26.2.2012 passed by the learned Sub Divisional Judicial Magistrate, Danapur, Patna against petitioner Nos. 2 to 5, in connection with Complaint Case No. 476(C) of 2012, and continuance of Cr. Proceedings against them, is not justified and, accordingly, the same are hereby quashed.

11. So far as the order of cognizance with regard to petitioner No. 1 namely, Vijendra Kumar @ Vijendra Kumar is concerned, this Court, on the basis of allegation in the complaint and the statement of the witnesses recorded during enquiry, does not find any illegality. The court below will proceed against petitioner No. 1 in accordance with law.

12. This Cr. Misc. application, is accordingly, allowed in part.

(Sanjay Priya, J)

S.Ali/-

AFR/NAFR	NAFR
CAV DATE	13.02.2017
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