

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.34625 of 2014

Arising Out Complaint Case No. -1802(C) Year- 2013 Thana -Nayagaon District- BEGUSARAI

- =====
1. Md. Kalam S/o Md. Ahmad
 2. Md. Shamshad S/o Md. Ahmad
 3. Najma Khatoon W/o Md. Kalim
 4. Md. Ahmad S/o Late Sadul Mian

All resident of Village-Dariyapur, P.S.-Nayagaon, District-Begusarai.

.... Petitioner/s

Versus

1. The State of Bihar.
2. Shehnaj Khatoon W/o Md. Kalam, D/o Abdul Hafiz, Resident of Dariapur, P.S.-
Nayagaon, District- Begusarai, at present resident of village- Salimpur, P.S.-
Barauni Rephinery, District Begusarai.

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Manoj Kumar, Adv.

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

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CORAM: HONOURABLE MR. JUSTICE SANJAY KUMAR

ORAL JUDGMENT

Date: 25-08-2017

Heard Mr. Manoj Kumar, learned counsel appearing on behalf of the petitioners and Mr. Upendra Kumar, learned Additional Public Prosecutor representing the State.

2. This criminal miscellaneous application under section 482 of the Code of Criminal Procedure, has been filed to quash the order dated 20.05.2014 passed by the learned Sub-Divisional Judicial Magistrate, Begusarai in Complaint Case No. 1802(C)/2013 whereby and whereunder the learned Magistrate, finding *prima facie* case for the offences under sections 498(A), 323, 379/34 of the Indian Penal Code and section 4 of Dowry Prohibition Act, summoned the petitioners.



3. The fact of this case, in brief, is that the opposite party no. 2 filed a complaint case on the file of learned Chief Judicial Magistrate alleging *inter alia* that she was married with the petitioner no. 1 for about 10 years ago and after marriage, her husband and in-laws started demanding Rs.3,00,000/-as dowry. When the said demand was not fulfilled, she was brutally assaulted and ousted from her matrimonial house. The learned Magistrate enquired into the matter and took cognizance as stated above.

4. The learned counsel for the petitioners submits that immediately after filing of the complaint case, she lodged an FIR before the S.H.O. of Nayagaon Police Station alleging therein that her husband and in-laws used to torture her and on 20.09.2013 they poured kerosene oil on her person with intention to kill her. She further alleged that the accused persons abused, assaulted and ousted her from their house. On the basis of her written report, a Police case, vide Nayagoan Police Station Case No. 49 of 2013 was registered on 21.09.2013 for the offence under section 498A of the Indian Penal Code. It has been submitted that both the cases are at initial stage. As per order dated 31.07.2017, a report was called for as regards stage of trial. The learned Sub-Divisional Judicial Magistrate, Begusarai, as per letter no. 44 dated 05.08.2017, has reported that the Complaint Case No. 1802(C)/2013 has been fixed for appearance of accused on



30.08.2017. The complainant has not filed the requisites of notice for issuance of summons. The complaint case was filed in the year 2013 and since last 4 years, the case is pending for filing requisites for issuance of summons against the accused persons.

5. The grievance of the petitioners is that for the same offence, the opposite party no. 2 has filed two cases, i.e one complaint case and another Police case, as stated above and so, prosecution of these petitioners in two trial is bad in law in view of section 210 of the Code of Criminal Procedure. The learned counsel for the petitioners has prayed to quash the cognizance order passed in complaint case.

6. The learned Additional Public Prosecutor on the other hand opposed the submission.

7. It appears that the learned Magistrate on going through the complaint petition and the statement of witnesses during enquiry, took cognizance for the offences under section 498A, 323, 379/34 of the Indian Penal Code and section 4 of the Dowry Prohibition Act. The order taking cognizance is based on material on record. I do not find any illegality in the impugned order requiring any interference under inherent jurisdiction of this Court under section 482 of the Code of Criminal Procedure.

8. Accordingly, this application is dismissed. Since



the allegation in both the cases are identical, the same are directed to be amalgamated and tried together.

(Sanjay Kumar, J)

Mahesh/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	04.09.2017
Transmission Date	04.09.2017

