

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.36638 of 2014

Arising Out of PS. Case No.-874 Year-2013 Thana- EAST CHAMPARAN COMPLAINT
District- East Champaran

-
1. Sk. Kashim Son of Abdul Khalik
 2. Anwari Khatoon Wife of Sk. Abdul Khalik
 3. Kamruddin @ Sk. Kamruddin Son of Sk. Moushin
 4. Aklima Khatoon @ Akalia Khatoon Wife of Sk. Abdul Khalik
 5. Abdul Khalik Son of sk. Moushin All are resident of village-
Siswaniya, P.S.- Banjariya, District- East Champaran

... .. Petitioner/s

Versus

1. The State of Bihar
2. Amza Khatoon Wife of Sk. Khasim, daughter of Zamil Akhtar resident of
village- Siswaniya, P.S.- Banjariya, District- East Champaran

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr. Vijay Shankar Shrivastava, Adv
For the State	:	Mr. S.DAYAL(APP)
For the O.P No. 2	:	Mr. Dhanjay Kumar No. 2

CORAM: HONOURABLE MR. JUSTICE S. KUMAR

ORAL JUDGMENT

Date : 13-12-2017

Heard learned counsel for the petitioner, learned
counsel for the State and learned counsel for the O.P. No. 2.

This petition under Section 482 of the Cr.P.C has
been filed for quashing the order dated 28.05.2014 passed by
Chief Judicial Magistrate, East Champaran at Motihari in
Complaint Case No. C-874 of 2013 (Trial No. 7102 of 2014), by
which cognizance of the offence under Sections 498A and
380/34 of the Indian Penal Code, has been taken against the
petitioners.

Briefly stated, the facts of the case is that



complainant-opposite party no. 2 filed a complaint case in the court of Chief Judicial Magistrate, East Champaran at Motihari, alleging therein that at about 10 years ago the complainant-opposite party no. 2 was married with Sk. Kashim (petitioner no. 1) and after marriage Bidagiri was performed and thereafter son Safroj was born out of the said wedlock. Her husband-petitioner no.1 Sk. Kashim, was habituated of intoxication and had also illicit relation with petitioner no. 2 Anwari Khatoon and she was assaulted and abused whenever she demanded maintenance for herself and her child. An attempt was also made to kill her by giving poison to her and on 31.03.2013, the complainant-opposite party no. 2 left her matrimonial home and went to her parental home. The accused-petitioners had also took her jewellery and clothes and did not permit her to take it with her.

On the basis of such complaint, complainant-opposite party no. 2 was examined on S.A. by the court below and in support of her complaint case, three witnesses were also examined by the court below and on the basis of S.A. of complainant-opposite party no. 2 and enquiry witnesses, the court below found *prima facie* case to be made out against the accused-petitioners and took cognizance of the offence under



Section 498A and 380/34 of the IPC and issued summons for their appearance to face the trial.

Learned counsel for the petitioners submit that they are innocent and have been falsely implicated in this case on the basis of false and concocted story. Petitioner No. 1 Sk. Kashim is the husband of the complainant-opposite party no. 2 who had filed a petition before Family Court, Nainital for restitution of conjugal rights in Nainital and notices were issued to the complainant-opposite party no. 2, but she did not appear before the Family Court, Nainital and the case of restitution of conjugal rights was decreed ex parte and the present case has been filed by the complainant-opposite party no. 2. The petitioner no. 1 Sk. Kashim is the husband, petitioner no. 2 Anwari Khatoon is the Dayadin(husband's brother's wife), petitioner no. 3 Kamruddin is the cousin Father-in-Law, petitioner no. 4 Aklima Khatoon is the Mother-in-Law and petitioner no. 5 Abdul Khalik is the Father-in-Law of the complainant-opposite party no. 2. It has been stated that they are ready to keep the complainant-opposite party no. 2 with full dignity and honour and also to maintain her.

Having heard learned counsel for the petitioners, learned counsel for the State and learned counsel for the Opposite Party No. 2, it is apparent that there is no specific



allegation of any over act against the petitioners. The allegation against them are vague, general and omnibus in nature.

Considering the facts and circumstances of the present case, the order taking cognizance dated 28.05.2014 so far it relates to petitioner nos. 2 to 5 is hereby quashed. However, the same will continue against petitioner no. 1.

The petition is partly allowed.

(S. Kumar, J)

ranjan/-

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	18.12.2017
Transmission Date	18.12.2017

