

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.21687 of 2012

Arising Out of PS.Case No. -0 Year- null Thana -null District- PATNA

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1. Sajjan Kumar Hisariya, son of Shri Banbari Lal Hisariya
2. Mrs. Nilam Hisariya, wife of Sajjan Kumar Hisariya
3. Nihar Hisariya @ Nihar Sajjan, son of Sajjan Kumar Hisariya
All are resident of 503/4, Abhishek Plaza, Exhibition Road, P.S. Gandhi Maidan,
Distt. Patna.

.... Petitioner/s

Versus

1. The State of Bihar
2. Smita Dutta, wife of Rahul Ranjan, daughter of Shri Biresh Dutta Modi, C/304,
Charminar Apartment, Road No. 12, Rajender Nagar, P.S. Kadam Kuan, Distt.
Patna.

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Bipin Kumar, Advocate.
Mr. Arun Kumar, Advocate.
For the Opposite Party/s : Mr. Angad Kumar, Advocate.
Mr. Rajani Kant Singh, Advocate.

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CORAM: HONOURABLE MR. JUSTICE SANJAY PRIYA
ORAL JUDGMENT
Date: 25-07-2017

1. This application under Section 482 of the Code of Criminal Procedure has been filed for quashing the order dated 13.01.2012 passed by the learned Sub Divisional Judicial Magistrate, Patna, in Complaint Case No. 1812(C) of 2011 by which the learned Magistrate after holding enquiry has found *prima facie* case against the petitioners and other accused persons for the offences under Section 498A of the Indian Penal Code and Section 3/4 of Dowry Prohibition Act.

2. Heard learned counsel for the petitioners and State.



3. As per complaint petition, the complainant has love affair with one Rahul Ranjan and, both finally got married on 19.4.2009. There is allegation against these petitioners in paragraphs- 7 to 15 that after marriage of the complainant with said Rahul Ranjan, these petitioners being the father, mother and brother of the husband of the complainant, did not allow proper restoration of conjugal life between husband and wife. There is specific allegation against them that they instigated Rahul Ranjan when he went again to live in Chennai with complainant and also committed mental and physical torture with the complainant. On such instigation, the relationship between husband and wife finally broke off and the husband left the complainant.

4. The counsel for the petitioner has submitted that they are parents-in-law and brother of the complainant. There is general allegation against them.

5. Learned counsel for the petitioner has relied on a decision of Hon'ble Supreme Court reported in **2013 (1) PLJR 10 (Geeta Mehrotra and Anr. Vrs. State of U.P. & Anr.)** and AIR 2010 SC 3363 (**Preeti Gupta and another Vrs. State of Jharkhand and Anr.**) He has submitted that in absence of specific allegation and *prima facie* case against co-accused, the order taking cognizance is bad in law and abuse of process of court. The learned counsel for the



petitioner has further submitted that Hon'ble Supreme Court has also held in Geeta Mehrotra Case that ***“FIR disclosing mere casual reference of names of the family members in a matrimonial dispute without any allegation of their active involvement in the offence is not sufficient for taking cognizance moreso, when tendency is to rope in entire family members in matrimonial dispute”***. As such, taking cognizance is not justified.

6. The counsel for the opposite party No. 2 has appeared. He has submitted that there is specific allegation against all these petitioners of instigating the husband and also committing physical and mental torture with the complainant who has performed love marriage with Rahul Ranjan. It is alleged that due to such instigation and torture, the relationship between husband and wife got broke off and the husband left her.

7. The court below has, in the impugned order, mentioned in detail about the specific overt act committed by all these petitioners and after discussing those specific overt acts as well as Solemn Affirmation of the complainant and statement of other witnesses, found *prima facie* case against these petitioners.

8. In the instant case, the Solemn Affirmation of the complainant as well as statement of other witnesses has also been brought on record by the petitioners.



9. From perusal of the allegation in the complaint as well as statement of those witnesses, this Court finds that there is no illegality committed by the learned Magistrate in passing the impugned order.

10. The learned Magistrate is only required to see the *prima facie* case at the time of holding enquiry.

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

12. This Criminal Miscellaneous application is accordingly dismissed.

13. The Trial Court will proceed in the trial in accordance with law.

(Sanjay Priya, J)

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AFR/NAFR	AFR
CAV DATE	N.A
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