

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.40192 of 2013

Arising Out of PS.Case No. -393 Year- 2011 Thana -NALANDA COMPLAINT CASE District-
NALANDA (BIHARSHARIFF)

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1. Birju Prasad, Son of Vasant Sao
 2. Vasant Sao Son of Late Nathun Sao
 3. Malti Devi Wife of Vasant Sao, all resident of Village-Manpur, P.S.-
Mufasil, District-Gaya

.... Petitioners

Versus

1. The State of Bihar
2. Soni Kumari, D/o Rakesh Sao, Resident of Babur Banna P.S.-Bhagan
Bigha (Rahui) District-Nalanda

.... Opposite Parties

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Appearance :

For the Petitioners : Mr. Mukesh Kumar, Advocate
For the Opposite Parties : Mr. Navin Kr. Pandey(APP)

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CORAM: HONOURABLE MR. JUSTICE JITENDRA MOHAN SHARMA
ORAL ORDER

5 24-04-2017 This Criminal Miscellaneous has been filed for quashing the order dated 09.08.2011 passed by the learned S.D.J.M., Nalanda at Biharsharif in Complaint Case No. 393 C of 2011 whereby and whereunder cognizance has been taken for the offences under Sections 323, 504, 498A/34 of the Indian Penal Code and Section 3/4 of the Dowry Prohibition Act against the petitioners.

The petitioners are Bhaisur, father-in-law and mother-in-law and they have challenged the said order on the ground that they have been unnecessarily made party as accused. In this case, the husband of the complainant has



filed earlier a case for restitution of conjugal rights and thereafter by way of counterblast this case has been lodged and, as such, this case is fit to be quashed.

The complainant in her statement on solemn affirmation during cross-examination by the court has stated that her husband is Head Cashier in UCO Bank and she lived with her husband for four months at Sasaram and thereafter she came at *Maika* from there alone so no offence against these petitioners is made out, they have got no concern with the family affairs of the complainant and her husband. It is also submitted that before charge the complainant has been cross-examined and no offence as alleged against the petitioners is made out.

The learned A.P.P. on the other hand, submits that from perusal of the complaint petition it reveals that there is allegations against all the accused persons including the petitioners of torturing and assaulting her due to non-fulfillment of demand of Alto Car and a gold chain, ultimately, they ousted her from the in-laws house thereafter the complainant stayed with her husband at Sasaram, but there also she was tortured and also she was ousted. The complainant during her statement on solemn affirmation and



inquiry witnesses Bhola Kumar and Usha Devi have supported the allegation against the petitioners also and, as such, the learned S.D.J.M., Nalanda at Bihar Sharif has rightly passed the order dated 09.08.2011.

Having considered the submissions, after going through the records, order dated 09.08.2011 and noticing that the complainant in the complaint petition as alleged against the petitioners and further inquiry witnesses Bhola Kumar and Usha Devi have stated regarding the hands of the petitioners also in the alleged offence and, as such, the learned S.D.J.M., Nalanda at Bihar Sharif has rightly passed the impugned order dated 09.08.2011 and there is no illegality, incorrectness or impropriety in the same. At the time of taking cognizance, the court is required to see as to whether on the basis of materials collected during inquiry prima facie offence is made out or not to proceed against the accused persons. The defence of the accused persons cannot be looked into at this stage. In this case before charge, witnesses have also been examined and cross-examined which can be considered at appropriate stage.

In the facts and circumstances stated above, finding no merit in this Criminal Miscellaneous the same is



hereby dismissed.

However, in case, the matter is compromised then the learned Magistrate will pass an order considering the compromise arrived between the parties. The contention of the petitioners shall be raised at the time of framing of charge which can be well considered in accordance with law.

(Jitendra Mohan Sharma, J)

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