

**IN THE HIGH COURT OF JUDICATURE AT PATNA**

**Criminal Miscellaneous No.21001 of 2012**

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

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1. Raj Kumar Patel @ Sonu Patel S/O Deochand Patel Resdient Of Village- Sidarth Nagar Colony, P.S.- Ijjat Nagar, District- Baraily (U.P.)

2. Deochand Patel @ Deochand S/O Late Sukh Nandan Patel Resdient Of Village- Sidarth Nagar Colony, P.S.- Ijjat Nagar, District- Baraily (U.P.)

3. Radhika @ Radhika Devi W/O Deochand Patel Resdient Of Village- Sidarth Nagar Colony, P.S.- Ijjat Nagar, District- Baraily (U.P.)

4. Kumari Soni D/O Deochand Patel Resdient Of Village- Sidarth Nagar Colony, P.S.- Ijjat Nagar, District- Baraily (U.P.)

5. Kumari Punam D/O Deochand Patel Resdient Of Village- Sidarth Nagar Colony, P.S.- Ijjat Nagar, District- Baraily (U.P.)

6. Kumar Deepak S/O Deochand Patel Resdient Of Village- Sidarth Nagar Colony, P.S.- Ijjat Nagar, District- Baraily (U.P.)

.... .... Petitioners

Versus

1. The State of Bihar

2. Guriya @ Shampe, wife of Raj Kumar Podel, daughter of Sri Nand Kishore Choudhary, Resdient Of Village- Athar, P.S.- Nawanagar, District- Buxar.

.... .... Opposite Parties

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**Appearance :**

For the Petitioners : Mr. Anirudh Mishra, Advocate

For the State : Mr. Jharkhandi Upadhyay, A.P.P.

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**CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR**

**ORAL JUDGMENT**

**Date: 25-04-2017**

The petition for quashing the cognizance order dated 15.3.2012 taking cognizance against them under Sections 498A of the Indian Penal Code and Section 4 of Dowry Prohibition Act in Complaint Case No.266 of 2011/Trial No.1405 of 2012.

2. A Complaint Case No.266 of 2011 was filed by Guriya @ Shampe, wife of Raj Kumar Patel, the petitioner



no.1 of this petition alleging therein that her marriage was solemnized with Raj Kumar @ Sonu Patel according to Hindu rites three years prior to filing of the complaint. Dowry was also given to accused persons in the marriage. After marriage, she came to her matrimonial home but after lapse of 5-6 months, accused persons again started to make demand of a motorcycle and washing machine and used to torture her physically and mentally. Ultimately, the demand was not fulfilled, they send her back to her parents home on 22.3.2011 keeping of her jewellerys and cloths. At that time, she was also carrying pregnancy but they administered some medicine as a result it got terminated. At present, she is staying in her parents home but no one is coming to take her back rather they are threatened for giving divorce.

3. The court below examined the complaint on S.A. and after recording statements of witnesses under Section 498A of I.P.C. and Section 4 of Dowry Prohibition Act.

4. Learned counsel appearing on behalf of the petitioners submits that the facts alleged in the complaint do not make out a case under Section 498A of I.P.C. and Section 4 of the Dowry Prohibition Act. Secondly, it is submitted that petitioner nos.4 and 5, namely, Kumari Soni and Kumari



Punam respectively are Nanads minor in age less than 16 years and 12 years as the certificate age of Soni is 5.3.1996, age of Punam is 1.7.2000 and age of another accused Kumar Deepak (Dewar of the complainant) is 19.7.2002. Dipu is only seven years at the time of marriage and by the year 2011, he was only nine years of age. Learned counsel submits that according to Section 83 of I.P.C., nothing is an offence done by a child above seven years of age and under 12 years. Moreover, there is no specific allegation against these three accused, namely, Kumari Soni, Kumari Punam and Kumar Deepak. Further submission is that as per the allegation itself, the demand of dowry and torture in that connection was committed at Barailly, Uttar Pradesh where the accused persons lived, so there is no territorial jurisdiction of the criminal Court in Buxar. On that score also, the impugned order requires to be quashed.

5. The learned A.P.P. submits that there is no illegality in the impugned order. The complainant-opposite party no.2 was tortured by the accused persons in connection with demanding further dowry after marriage.

6. Considering the submissions of both sides and on perusal of record, I find that there is allegation of making demand of further dowry from the complainant after



solemnization of his marriage, when she started living in her matrimonial home. There appears specific allegation against her husband and father-in-law and mother-in-law, petitioner nos.1, 2 and 3 though no specific allegation is found against Kumari Soni, Kumari Punam and Kumar Deepak, two minor unmarried Nanads and brother-in-law (Dewar). Moreover, at the time of marriage, Kumari Punam was only nine years old as her date of birth is 1.7.2000 and Deepak is only seven years as his date of birth is 19.7.2002 and Kumari Soni was 13 years of her age and after two years of marriage, the complainant was compelled to return back to her parents home. In view of Section 83 of the I.P.C., no Act is an offence done by a child above seven years of age but less than 12 years. For the reason, he has not attained sufficient maturity of understanding to judge the nature of consequence of his conduct on that occasion.

7. In the case of **Geeta Mehrotra & Anr. vs. State of U.P. & Anr.** reported in **2013(1) PLJR 10 (SC)**, the Hon'ble Apex Court has held that FIR disclosing mere casual reference of names of the brother and sister of the husband; so mere casual reference of the names of family members in a matrimonial dispute without any allegation of their active involvement in the offence is not sufficient for taking



cognizance, more so, when tendency is to rope in entire family members in matrimonial disputes.

8. In view of the aforesaid ratio decided by the Apex Court in the case of **Geeta Mehrotra & Anr. (Supra)** and in absence of any specific allegation against petitioner nos.4 to 6 coupled with age of Kumari Punam and Kumar Deepak less than 12 years of age during the period of alleged offence, no prima facie case is made out against them under Section 498A of I.P.C. and Section 4 of the Dowry Prohibition Act. As far as petitioner nos.1 to 3 are concerned, there is specific allegation and material against them for taking cognizance. Submission of the learned counsel for the petitioners is that there is lack of territorial jurisdiction of the court of S.D.J.M., Buxar is not correct proposition.

9. In view of the provisions of Chapter-XIII of the Code of Criminal Procedure, which deals with jurisdiction of the Criminal Court in Inquiries and Trials specially in view of Sections 177, 178 and 179 of Cr.P.C; it is a case of cruelty, mental and physical as well as harassment to the complainant by petitioner nos.1 to 3 in relation to further demand of dowry so the nature of offence is a continuing one as the act of harassment continues to her by the act of ousting her from



matrimonial home so in such situation if wife lives at parents home after being kicked out of the matrimonial home for not meeting further demand of dowry in such situation the offence under Section 498A of I.P.C. becomes a continuing offence so may be enquired into or tried by a court of having jurisdiction over any of such local areas. Moreover, according to Section 179 of I.P.C., offence is triable where Act is done or where consequences ensues. The Apex Court in case of **Sunita Kumari Kashap vs. State of Bihar & Anr.** reported in **AIR 2011 SC 1674** held that when offence is continuing one having been committed in more local areas of various courts any one of such courts have jurisdiction to proceed with trial.

10. Applying the same principle in the present case also according to Section 178(C) of Cr.P.C., the S.D.J.M. Court, Buxar has got territorial jurisdiction to make enquiry or trial in the present case so there is no lack of any territorial jurisdiction.

11. Therefore, in view of the said discussion, the cognizance order against petitioners Kumari Soni, Kumari Punam and Kumar Deepak are set aside whereas there is no any error of cognizance and further proceeding against Raj Kumar Patel, Deochand Patel, Radhika @ Radhika Devi, husband,



father-in-law and mother-in-law respectively.

12. Accordingly, this quashing petition is disposed of.

**(Arun Kumar, J)**

N.H./-

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