

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.46496 of 2014

Arising Out of PS.Case No. -153 Year- 2012 Thana -PARSABAZAR District- PATNA

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Amit Kumar, S/o Rajkishore Prasad, Resident of Village - Etwarpur, P.O. - Kurthaul, P.S. - Parsa Bazar, District - Patna.

.... Petitioner/s

Versus

1. The State of Bihar.
2. Neha Devi @ Rinki Devi, Wife of Jyoti Ranjan Kumar, Daughter of Ramanand Singh, at present resident of Mirchaiya Mandir, Budh Marg, Patna Gaya Road, P.S. - Kotwali, P.O. - G.P.O., District - Patna.

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Gaurav Govind, Adv.
For the Opposite Party no.1 : Mrs. Sharda Kumari, APP.
For the Opposite Party no.2 : Mr. Ram Chandra Prasad, Adv.

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD

ORAL JUDGMENT

Date: 20-12-2017

Heard learned counsel for the petitioner and learned counsel for the opposite party no.2 as also learned APP for the State.

Petitioner, in the present case, is younger brother of the husband of the informant-opposite party no.2, who is seeking quashing of the order taking cognizance and issuance of summons passed in GR 5623 of 2012/Tr. 2322 of 2012, arising out of Parsa Bazar P.S. Case No.153 of 2012, by which the learned Magistrate has taken cognizance of the offences under Sections 498A, 379 and 325/34 of the Indian Penal Code read with Section 3/4 of the Dowry Prohibition Act and issued summons against the accused persons



including the present petitioner.

Learned counsel for the petitioner submits that the present case arises out of Parsa Bazar P.S. Case No.153 of 2012 which was lodged on 11.11.2012 by improving upon the allegations which the informant had earlier made while lodging Parsa Bazar P.S. Case No.10 of 2010 on 01.02.2010 which was registered under Sections 498A, 341, 323 and 504/34 of the Indian Penal Code read with Section 3/4 of the Dowry Prohibition Act. It is pointed out by reading the fardebyan of the informant-opposite party no.2 in the said case which is Annexure-2 to the present application that on earlier occasion there is not even whisper of allegation against the petitioner who is only younger brother of the husband of the informant-opposite party no.2. It is submitted that the marriage is of the year 2007 and the allegations in the FIR dated 01.02.2010 (Annexure-2) was that immediately after sometime of marriage the husband and in-laws of the informant-opposite party no.2 were demanding dowry and because of non-fulfilment of demand the accused in said case were committing certain act of torture against the informant-opposite party no.2. The allegations have only been made against the husband and in-laws in Parsa Bazar P.S. Case No.10 of 2010, but while making same allegations at this stage in Parsa Bazar P.S. Case No.153 of 2012 the informant has added the name of this petitioner also and the



allegations have been made that husband, devar (petitioner) and in-laws were involved in demanding a sum of Rs.50,000/- and a motorcycle etc. as dowry. Learned counsel submits that on the face of it, the allegations are false and baseless and it is a case of mala fide prosecution of the petitioner as even on perusal of the FIR as contained in Annexure-1 it would appear that the allegations involving this petitioner saying that husband, Devar and in-laws all together beaten up the informant and fractured her one finger about three months back are vague and omnibus. The allegations are ornamental in nature and thrust of the allegations is against the husband and in-laws as it is alleged that they refused to take the informant to her sasural residence/home. Learned counsel for the petitioner submits that the petitioner is separate in mess and business and he has no concern with the informant-opposite party no.2.

On the other hand, learned counsel representing the informant-opposite party no.2 submits that no illegality or infirmity has been committed by learned Magistrate while passing the order taking cognizance because it has been passed on the basis of the supplementary charge sheet submitted by the police. Learned counsel submits that in the facts and circumstances of the case the order taking cognizance is not required to be interfered with.

I have heard learned counsel for the parties and



perused the records. On a bare reading of the FIR, as contained in Annexure-2, it appears that there is no whisper of allegation against this petitioner, therefore, on 01.02.2010 when the said FIR was lodged there was no allegation either of demand of dowry or committing any act of torture against this petitioner. In the subsequent FIR lodged after two years the name of this petitioner has also been added and allegations have been made that he was also involved with others since 2007 in demanding the dowry and was also involved in commission of the act of torture. This Court can easily come to a conclusion that it is a case of mala fide prosecution with an intention to involve each and every family member of family of the husband. The allegations are thus not prima-facie believable and appear to have been purposely leveled with vague and ornamental kind of statements against this petitioner who is the younger brother of the husband. The allegations against him are highly improbable and the fact that there was no whisper of allegation against him in the FIR lodged on 01.02.2010 (Annexure-2) clearly indicates his false implication in the FIR (Annexure-1).

I am, therefore, of the considered opinion that the prosecution of the present petitioner is only an abuse of the process of the Court and it would be in the interest of justice to save him from further harassment by quashing of the order taking cognizance and



issuance of summons in so far as it relates to him.

In view of the discussions made hereinabove, the impugned order taking cognizance and issuance of summmmons as against the present petitioner is quashed and the application is allowed accordingly.

(Rajeev Ranjan Prasad, J)

Arvind/-

AFR/NAFR	
CAV DATE	
Uploading Date	23.12.2017
Transmission Date	23.12.2017

