

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.47780 of 2013

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

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1. Shankuntala Devi W/O Late Krishna Nandan Prasad Resident Of Mohalla- Postal Park, Indra Nagar, Main Road No.-1, P.S.- Jakkanpur, Dist.- Patna
2. Sanjeev Kumar Sinha S/O Late Krishnandan Prasad Resident Of Mohalla- Postal Park, Indra Nagar, Main Road No.-1, P.S.- Jakkanpur, Dist.- Patna
.... Petitioners

Versus

1. The State Of Bihar
2. Ranju Sinha D/O Sri Krishna Sharma Resident Of Mohalla- Postal Park, Indra Nagar, Main Road, P.S.- Kankarbagh, Dist.- Patna
.... Opposite Parties

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Appearance :

For the Petitioners : Mr. Gauri Shankar Prasad, Adv.
For the State : Mr. Uma Nath Mishra, APP
For O.P. No. 2 : Mr. Anil Kumar Sinha, Adv.

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CORAM: HONOURABLE MR. JUSTICE BIRENDRA KUMAR

ORAL JUDGMENT

Date: 09-01-2017

Heard the learned counsel for the petitioner, State and the opposite party no 2.

2. This is a petition for quashing the order, dated 14.12.2012, passed in Complaint Case No. 930(c) of 2011 by the Subdivisional Judicial Magistrate, Patna, whereby and whereunder the learned Court below has ordered for issuance of process against the petitioners to face trial for offence under Section 498A of the Indian Penal Code.

3. According to the complaint petition, opposite party no. 2, Ranju Sinha, entered into love marriage on 28.03.2006 with late Rajive Kumar Sinha. The petitioners are brother and mother of late Rajive Kumar Sinha. Out of the wed lock a male child was born on 13.07.2007 and on 25.03.2008 Rajive Kumar Sinha died an unnatural death, when the complainant was in her father's house. When the complainant was to report the matter to the police, the petitioners promised to pay Rs.1,000/- as maintenance and after one year of the death of the husband, the petitioners stopped maintenance of Rs.1,000/- and started torturing for demand of dowry. Specific allegation is that on 01.04.2011, when the complainant was sleeping in her room then the petitioners and others entered and started assaulting for non-



fulfillment of demand of dowry and threatened to expel her from the house. Further, allegation is of commission of theft of gold chain from the neck of complainant.

4. The witnesses, Sandhya Kumari and Baitarni Devi, were examined during enquiry and they supported the case of the complainant, which is evident from the impugned order. The petitioners have neither denied on oath that the witnesses have supported the prosecution case nor have produced depositions of those witnesses to substantiate that they did not support the prosecution case.

5. The record reveals that the matter was sent for mediation, after appearance of opposite party no. 2. The report of the mediator, dated 13.03.2015, would reveal that mediation failed because petitioner no. 2, Sanjeev Kumar Sinha, denied the marriage of the complainant with his brother.

6. The petitioners have challenged the impugned order, firstly on the ground that even if the averment in the complaint petition and the statement of the witnesses is assumed to be correct, no offence under Section 498A of the Indian Penal Code is made out.

7. I do not find any substance in the submission, aforesaid, after perusal of the the complaint petition. Paragraphs 8 and 9 thereof reads as follows :

“8 : That after expiry of one year of the death of the husband of the complainant the accused persons stopped to pay Rs.1,000/- and started to torture for demand for dowry and mentally also and they have told that without dowry how will live in this house.”

“9 : That the complainant is tollering all the tortures by the accused persons and living in her house and not to proceed this matter but lastly on 01.04.2011 when she was sleeping in her room then all the accused persons aforesaid entered into her room and started to MARPIT and demanding dowry and threatening to left this house and live with your parents thereafter snatched a golden chain from the neck of the complainant and told that immediately left this



house otherwise you would be murdered, so that there is no claim upon my property by you.”

8. Second contention is that the opposite party no. 2 did not produce any document or other evidence in support of her marriage with late Rajive Kumar Sinha and the marriage is itself denied. Hence, there is no matrimonial relation. Therefore, there is no question of demand of dowry etcetera or torture by the husband or his relatives.

9. The petitioners have not denied the aforesaid fact in the petition rather stated that the alleged marriage was a love marriage and inter-caste marriage. The petitioners had not participated in the alleged marriage. Hence, the question of demand of dowry even before the marriage or after the marriage or after the death of Rajive Kumar Sinha does not arise.

10. The aforesaid averment by necessary implication shows that the marriage has been admitted. Since, it was an inter-caste marriage, the petitioners did not participate.

11. In State of **Andhra Pradesh Vrs. Goloconda Linga Swamy & Anr., reported in 2004(4) P.L.J.R. (SC), 11** the Hon’ble Apex Court considered earlier observation in **Dr. Raghubir Saran Vrs. State of Bihar & Anr., reported in A.I.R. 1964 S.C., 1** that in proceedings instituted on complaint exercise of the inherent powers to quash the proceedings is called for only in a case where the complaint does not disclose any offence or is frivolous, vexatious or operative.

12. As discussed above, the complaint petition discloses the offence allegedly committed by the petitioners. There is nothing to disclose that the complaint is frivolous one. Hence, the proceedings of trial cannot be quashed at this stage.

13. Next submission of the petitioners is that the complaint petition has been filed with malafide intention as counter blast to Jakkanpur P.S. Case No. 106 of 2011 to wreak vengeance. The aforesaid police case was filed by one of the petitioners against the complainant and others.

14. Contention of the opposite party no. 2 is that the complaint petition was filed on 05.04.2011 whereas Jakkanpur P.S.



Case No. 106 of 2011 was filed subsequent thereof on 08.04.2011. More over, the police submitted final form in the aforesaid police case.

15. On perusal of the record, I find substance in the submission of the learned counsel for the opposite party no. 2. In fact the aforesaid police case is a subsequent case, hence, it can not be alleged that the present complaint is counter blast of the police case.

16. On consideration of entire facts and circumstances, appearing on record, I am of the view that the complaint case does not suffer from any inherent improbabilities.

17. I do not find any substance in the contention of the petitioners that in fact, the complainant wants to get her civil remedy of maintenance and share in the property by pressurizing through criminal proceedings. At the stage of issuance of process, the aforesaid probable defence can not be looked into.

18. Hence, I do not find any merit in this application. Accordingly, it stands **dismissed** and the stay of further proceedings before the Court below, vide order, dated 12.12.2013, stands vacated.

(Birendra Kumar, J)

SA/-

AFR/NAFR	NAFR
CAV DATE	
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