

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.5786 of 2012

Arising Out of Complaint Case No. -1196 Year- 2011 Thana –Siwan (M) District- SIWAN

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1. Yogendra Sharma son of Baidnath Sharma
 2. Indrawati Devi wife of Yogendra Sharma, both resident of village – Dubwalia, PS-Phulwaria, District-Gopalganj.
 3. Shambhu Sharma son of Ram Sagar Sharma, resident of village – Ratanpura, PS-Phulwaria, District-Gopalganj.

.... Petitioner/s

Versus

1. The State of Bihar.
2. Anju Devi D/o Sheojee Sharma, resident of village – Baghra, PS-Siwan (M), District-Siwan.

.... Opposite Party/s

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Appearance :

For the Petitioner/s	:	Mr. Dharmveer, Adv.
For the O.P.	:	Mr. Raghab Prasad, Adv.
		Mr. Mukesh Kumar Singh, APP

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CORAM: HONOURABLE MR. JUSTICE SANJAY KUMAR

ORAL JUDGMENT

Date: 31-08-2017

Heard Mr. Dharmveer, learned counsel for the petitioners,
Mr. Raghab Prasad, learned counsel as well as Mr. Mukesh Kumar Singh, learned Additional Public Prosecutor representing the State and perused the record.

2. This criminal miscellaneous application under section 482 of the Code of Criminal Procedure has been filed to quash the order dated 23.09.2011 passed by the learned Sub-Divisional Judicial Magistrate, Siwan in Complaint Case No. 1196 of 2011 whereby and whereunder the learned Court below, finding *prima facie* case for the



offences under sections 323, 498(A) of the Indian Penal Code and section 4 of the Dowry Prohibition Act, summoned the petitioners.

3. The petitioner nos. 1 and 2 are husband and *Sautan* of the complainant (O.P. No. 2) and the petitioner no. 3 is brother of petitioner no. 2. The complainant has alleged that she was married with the petitioner no. 1 on 22.05.2001 and after marriage, she started residing at Nainital with her husband and from the said wedlock, she has been blessed with a female child, who was about 5 years at the time of filing of the complaint petition. It has been further alleged that at the instigation of 1st wife and her brother, the husband started demanding Rs.50,000/- as well as a motor cycle, which was refused. Thereafter, the complainant was ousted from the matrimonial house.

4. The learned counsel for the petitioner submits that the complainant claims to be the 2nd wife of petitioner no. 1. The complainant is not legally married wife of petitioner no. 1, as she was not married with the petitioner no. 1. The petitioner no. 1 was married with the petitioner no. 2 for about 20 years ago. Since the complainant is not married wife of petitioner no. 1, the question of any demand of dowry does not arise. The allegation of demand of dowry and torture is omnibus and so, no offence under sections 323 and 498A I.P.C. is made out. The learned Magistrate without applying his judicial mind,



has passed the order in mechanical manner and so, the cognizance order is fit to be quashed.

5. The learned Additional Public Prosecutor opposed the submission.

6. On perusal of complaint petition and annexures on record, I find that there is specific allegation that the petitioner no. 1 was married with the complainant on 22.05.2001 and both of them started living at Nainital where he was working. She has further alleged that complainant has been blessed with a female child. The allegation of torture and assault appears specific against the petitioner no. 1. The complainant in her solemn affirmation and other witnesses at the time of enquiry, have supported the allegation of torture and assault against the petitioner no. 1. The learned Magistrate finding *prima facie* case, took cognizance against all the petitioners. From the materials on record, I find that the allegation of torture and assault is specific only against the petitioner no. 1 and to this extent I do not find any illegality in the impugned order and so, the order dated 23.09.2011 taking cognizance with respect to petitioner no. 1, does not require any interference and therefore, his prayer is dismissed.

7. So far petitioner nos. 2 and 3 are concerned, they are the 1st wife and her brother. The allegation of torture and assault appears omnibus. The complainant claims that she started residing at



Nainital where her husband-petitioner no. 1 was working. There is no allegation that the petitioner nos. 2 and 3 were also residing at Nainital and so, the question of torture and assault by them does not arise.

8. In this view of the matter, I find that criminal prosecution of petitioner nos. 2 and 3 would be an abuse of process of Court. As such, the order dated 23.09.2011 taking cognizance against petitioner nos. 2 and 3 passed by the learned Sub-Divisional Judicial Magistrate, Siwan in Complaint Case No. 1196 of 2011 and their criminal prosecution on that basis is quashed.

9. This criminal miscellaneous application is, accordingly, disposed of in the manner stated above.

(Sanjay Kumar, J)

Mahesh/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	10.09.2017
Transmission Date	10.09.2017

