

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.53932 of 2013

Arising Out of PS.Case No. -2488 Year- 2012 Thana -BEGUSARAI COMPLAINT CSAE District-
BEGUSARAI

- =====
1. Avnish Kumar @ Bablu, son of late Birendra Roy,
 2. Bipin Kumar Rai, son of late Birendra Roy,
 3. Bimla Devi, wife of late Birendra Roy &
 4. Munni Devi @ Saroj Kumari, wife of Bipin Kumar Rai, all are permanent resident of village-Rahimpur, Naya Tola, P.S. Muffasil, District- Khagaria.

.... Petitioner/s

Versus

1. The State of Bihar &
2. Madhu Kumari, wife of Avnish Kumar @ Bablu and daughter of late Sahjanand Singh, at present resident of village-Bangala Road, premises of Omar Balika High School, P.S.- Town Begusarai, District- Begusarai.

.... Opposite Party/s

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Appearance:

For the Petitioner/s : Mr. Sunil Kumar Pathak, Advocate
Mr. Birju Prasad, Advocate

For the Opposite Party/s : Mr. Manoj Kumar 1, APP
Mr. Jai Prakash Singh, Advocate
Mr. Rajeev Ranjan Prasad, Advocate

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CORAM: HONOURABLE MR. JUSTICE SANJAY PRIYA

CAV JUDGMENT

Date: 15-05-2017

1. This application under Section 482 of the Code of Criminal Procedure has been filed for quashing the order dated 15.05.2013 passed by the Sub-Divisional Judicial Magistrate, Begusarai, in Complaint Case No.2488-C of 2012 by which the learned Magistrate after holding enquiry has found *prima facie case* against the petitioners under Section(s) 498-A, 323, 379, 417/34 Indian Penal Code and Section 4 of the Dowry Prohibition Act.

2. Heard learned counsel for the petitioners and the learned APP for the State as well as counsel for the Opposite Party



No.2.

3. It has been submitted on behalf of the petitioners that the complainant herself does not want to live with husband. The husband has filed Matrimonial Suit No.71 of 2013 for restitution of conjugal rights before the Principal Judge, Family Court, Khagaria. Petitioner No.1 is working as Headmaster in a High School and he is always ready to keep the wife. Petitioner No.2 happens to be the *Bhaisur* of the Opposite Party No.2, who is Development Officer in Bihar Ambedkar University since 2002 and is living with his wife (Petitioner No.4) in the University Quarter at Muzaffarpur and there is no concern with Opposite Party No.2 because they are living separately. Petitioner No.4, Munni Devi @ Saroj Kumari, is *Gotani* of Opposite Party No.2 and she is also in government job working as Assistant Teacher at Muzaffarpur. Petitioner No.3 is widow old mother-in-law of the Opposite Party No.2-complainant, who is living with her elder son-petitioner No.2 at Muzaffarpur since 2002.

4. Counsel for the Opposite Party No.2 has stated that all these accused persons have committed physical and mental torture with the complainant and ousted her from the matrimonial house along with three year old minor daughter. Petitioner Nos.1, 2 and 4 are in government job and they always tortured the complainant for non-fulfillment of demand of dowry. The



complainant is living with her brother for the last two years and whenever she tried to talk with the accused persons, they refused to talk and the husband has said that he would perform second marriage. It is further alleged that the petitioner No.1 got the money withdrawn from the account of complainant to purchase the land and petitioner Nos. 2 and 3 took all the jewellery of the complainant.

5. During enquiry, complainant was examined on Solemn Affirmation. Statement of three other witnesses was also recorded during enquiry by the Magistrate. The Magistrate on the basis of Solemn Affirmation of complainant, statement of three witnesses recorded during enquiry found *prima facie case* against all these accused persons for the offence under Section(s) 498-A, 323, 379, 417/34 Indian Penal Code and Section 4 of the Dowry Prohibition Act and Section 4 of the Dowry Prohibition Act..

6. The Hon'ble Supreme Court in the case of *State of Bihar Vs. Rajendra Agrawalla* reported in *(1996) 8 Supreme Court Cases 164* has held that inherent power of the Court under Section 482 of the Code of Criminal Procedure should be very sparingly and cautiously used only when the Court comes to the conclusion that there would be manifest injustice or there would be abuse of the process of the Court, if such power is not exercised. At that stage, it is not open for the Court either to sift the evidence or appreciate the



evidence and come to the conclusion that no *prima facie* case is made out.

7. Similarly, in another decision in the case of ***Chief Enforcement Officer Vs. Videocon International Ltd.*** reported in ***(2008) 2 Supreme Court Cases 492***, it has been held that object and scope of enquiry under Section 202 Cr. P. C. is to ascertain whether there is *prima facie* case against the accused. At that stage, the Magistrate examines whether there is sufficient ground for proceeding with the matter and not whether there is sufficient ground for conviction.

8. In the instant case, after perusal of the complaint, it appears that initially complaint was filed against eight accused persons. The learned Court below after taking into consideration Solemn Affirmation of complainant and the statement of three witnesses recorded during enquiry found *prima facie* case against the petitioners only for the offence under Section(s) 498-A, 323, 379, 417/34 Indian Penal Code and Section 4 of the Dowry Prohibition Act.

9. At the time of taking cognizance of the offence, the Court has to consider only the averments made in the Complaint Petition or in the charge-sheet filed under Section 173 Cr. P.C., as the case may be. It is not open for the Court to sift or appreciate the



evidence at that stage with reference to the material and come to the conclusion that no *prima facie* case is made out for proceeding in the matter. The Court before issuing process will record the evidence and on consideration of the averments made in the complaint and the evidence that is adduced during enquiry is only required to find out whether *prima facie* offence is made out and thereafter process would be issued against the accused persons.

10. The Court is not required to sift the evidence to come to conclusion whether offence has been made out or not. The learned Magistrate has mentioned in the impugned order that on the basis of the Solemn Affirmation of the complainant and the statement of three witnesses recorded during enquiry as well as allegation in the Complaint Petition *prima facie* case is made out against the accused persons (petitioners) for the offence under Section(s) 498-A, 323, 379, 417/34 Indian Penal Code and Section 4 of the Dowry Prohibition Act.

11. Therefore, this Court does not find any illegality in the impugned order dated 15.05.2013 passed by the Sub-Divisional Judicial Magistrate, Begusarai, in Complaint Case No.2488-C of 2012 by which he has found *prima facie* case under Section(s) 498-A, 323, 379, 417/34 Indian Penal Code and Section 4 of the Dowry Prohibition Act against the petitioners.



12. The application is, accordingly, dismissed.

13. Petitioners are given liberty to raise all the points, as raised in this petition, in the Court below at the appropriate stage or at the stage of framing of charge, which shall be considered and disposed off by the Court below in accordance with law on its own merit without being prejudiced by this order.

(Sanjay Priya, J)

J.Alam/-

AFR/NAFR	NAFR
CAV DATE	27-04-2017
Uploading Date	20-05-2017
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