

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.37508 of 2011

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Gupteshwar Thakur @ Gupteshwar Sharma S/O Late Angrahit Thakur R/O
Vill. Ladle, P.S. Dinara, Distt. Rohtas Petitioner

Versus

The State Of Bihar

Basmati Kuer W/O Late Sri Niwas Thakur R/O Vill. Ladue, P.S. Dinara,
Distt Rohtas At Present Vill. Dhawa, P.S. Bikramganj, Distt. Rohtas

... .. Opposite Party

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Appearance :

For the Petitioner/s : Mr. Raghunandan Kumar Singh

For the Opposite Party/s : Mr. D.MEHTA(APP)

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CORAM: HONOURABLE MR. JUSTICE JITENDRA MOHAN SHARMA
ORAL JUDGMENT

Date : 07-09-2017

The instant criminal miscellaneous application has been filed for quashing the order dated 18.01.2011 passed by learned Sub-Divisional Judicial Magistrate, Bikramganj, at Rohtas in Complaint Case No. 352 of 2010 whereby and whereunder after finding prima facie case to be made out against the petitioner for committing offences under Sections 323, 498A and 406 of the Indian Penal Code he has been ordered to be summoned to face the trial.

2. O.P. No. 2 Basmati Kuer filed the aforesaid complaint case alleging therein that her marriage was performed 40 years ago with Sri Niwas Thakur the cousin brother of the petitioner-accused and she spent her happy life during the lifetime of her husband and just after 10 years of her marriage her husband died leaving behind the complainant issueless. After



the death of her husband, there was a partition between the parties and according to the partition, 8 Bighas of land was allotted to the complainant and the complainant gave her land to the accused petitioner on yearly payment of Rs. 35,000/-. The accused petitioner used to make payment regularly but for last four years the accused petitioner stopped the payment and when the complainant demanded her dues he became angry and further the accused kept all her ornaments and Rs. 80,000/- and took her L.T.I. on plain paper and also her photographs. She went to Police Station to register the case but the Police did not register the case and then she filed the complaint. The complainant was examined on solemn affirmation and her three witnesses were examined during inquiry and the learned Magistrate after considering the materials collected during inquiry passed the impugned order.

3. The petitioner being aggrieved and dissatisfied with the said order filed this application challenging the legality, correctness and propriety of the same.

4. Learned counsel for the petitioner submits that the petitioner has got no concern with the complainant and her affairs. As a matter of fact there is dispute in between the complainant and the sister of her husband and that sister of the



husband of the complainant namely, Bachmuna Devi has filed Title Suit No. 74 of 2005 against the complainant and the petitioner and others in which parties have already appeared and that title suit is pending in the court of learned Sub-Judge Ist, Sasaram. The complainant pressurized the petitioner to file written statement and deposed against the sister of the husband of the complainant and when the petitioner denied then, she filed this false case. The petitioner left cultivating the share of the complainant since 2005 i.e. after the filing of the Title Suit No. 74 of 2005 and the complainant and the sister of her husband used to cultivate her share and the petitioner has got no concern with the same. The complainant requested several times to the petitioner to cultivate her land but the petitioner refused and hence, his false implication. No offence under Section 498A IPC is made out because it is admitted in the complaint petition itself that the petitioner is a cousin brother of the husband of the complainant and is separate since long. No offence under Section 406 IPC is also not made out and when there is remedy before the competent Civil Court so the criminal case filed against the petitioner is not maintainable. The witnesses examined during inquiry are own relative of the complainant and no independent witness has come forward and as such the



impinged order is fit to be quashed. The petitioner is a respectable person and if the impugned order is allowed to be continued, it will cause irreparable loss and injury to the petitioner. Learned S.D.J.M. without applying his judicial mind has passed the impugned order and as such the same is fit to be quashed.

5. Learned APP and learned counsel appearing for the opposite party no. 2, on the other hand, submit that the learned Magistrate after considering the materials collected during inquiry has passed the impugned order which does not require any interference of this Court. After perusal of the complaint petition, the statement of the complainant on solemn affirmation and the statements of Ram Kumari Devi inquiry witness no. 1, Sunita Devi inquiry witness no. 2 and Awadhesh Thakur inquiry witness no. 3, the learned Magistrate has found prima facie offence to be made out under Sections 323, 498A and 406 of the Indian Penal Code against the petitioner, then he has been summoned. Before charge also the witnesses have been examined and at this stage no interference is required by this Court.

6. Having considered the submissions urged at Bar, going through the records and noticing that the complainant



being widow has been harassed and tortured by the petitioner who is non-else but the cousin of the husband of the complainant. The complainant in her statement recorded on solemn affirmation and the three inquiry witnesses have supported the allegation as made out in the complaint petition and the learned S.D.J.M. has rightly passed the order holding that prima facie offences under Sections 323, 498A and 406 of the Indian Penal Code is made out against the petitioner. At this stage, learned Magistrate is required only to see as to whether, on the basis of materials collected during inquiry, prima facie offence is made out or not. The defence of the accused cannot be looked into. The points raised by the petitioner can well be judged at the time of framing of charge and not at this stage.

7. In the result, the impugned order is hereby confirmed and finding no merit in this criminal miscellaneous application, the same is hereby dismissed.

8. However, the petitioner is at liberty to raise all the points before the learned court below at the time of framing of charge.

avin/-

(Jitendra Mohan Sharma, J)

AFR/NAFR	NAFR
CAV DATE	N.A
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