

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.34681 of 2013

Arising Out of PS.Case No. -1428 Year- 2011 Thana -SIWAN COMPLAINT CASE District-
SIWAN

- =====
1. Md. Javed Khan @ Javed Khan S/O Kadir Khan Resident Of Village Umarganj, Police Station Balia, District Balia (Uttar Pradesh).
 2. Juber Khan S/O Kadir Khan Resident Of Village Umarganj, Police Station Balia, District Balia (Uttar Pradesh).
 3. Tarana Khatoon @ Tarannum D/O Kadir Khan Resident Of Village Umarganj, Police Station Balia, District Balia (Uttar Pradesh).
 4. Mahejabin D/O Kadir Khan Resident Of Village Umarganj, Police Station Balia, District Balia (Uttar Pradesh).
 5. Maheleka @ Maheleka Praveen D/O Kadir Khan Resident Of Village Umarganj, Police Station Balia, District Balia (Uttar Pradesh).
 6. Najma Khatoon @ Najma W/O Kadir Khan Resident Of Village Umarganj, Police Station Balia, District Balia (Uttar Pradesh).
 7. Kadir Khan S/O Late Abdul Hamid Khan Resident Of Village Umarganj, Police Station Balia, District Balia (Uttar Pradesh).
 8. Khurshid Khan S/O Kadir Khan Resident Of Village Umarganj, Police Station Balia, District Balia (Uttar Pradesh).

.... Petitioner/s

Versus

1. The State Of Bihar.
2. Hasina Khatoon D/O Bint Alauddin W/O Md. Javed Khan Resident Of Village Chandpali, Police Station Zeeradei, District Siwan.

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Mukesh Kumar Rana
For the Opposite Party/s : Mr. Kumar Birendra Narayan(App)

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CORAM: HONOURABLE MR. JUSTICE VINOD KUMAR SINHA
ORAL ORDER

3 11-01-2017 This application has been filed on behalf of the petitioners for quashing order dated 05.11.2011 passed in Complaint Case No.1428 of 2011correspondign to Trial No.3196 of 2013 by the learned Sub-Divisional Judicial Magistrate, Siwan, who took cognizance against these petitioners under Section 498A, 406 of the Indian Penal Code and Section 4 of the Dowry Prohibition Act



and issued process against the petitioners.

The prosecution story in short is that the marriage of Opposite Party No.2 was solemnized with petitioner no.1 but after the marriage, the members of in-laws were not happy so they started torturing her for fulfillment of their demand of dowry and assaulted her on 02.04.2011 but the complaint case was filed on 02.07.2011.

After an enquiry, the learned Sub-Divisional Judicial Magistrate, Siwan passed an order under Section 202 of the Code of Criminal Procedure for issuing processes against the petitioners, which has been challenged before this Court in the present application under Section 482 of the Code of Criminal Procedure.

It has been submitted on behalf of the petitioners that there is a general and omnibus allegation against all the accused persons including the petitioners and nothing has been specifically alleged against any of the accused persons including the petitioners. It has also been submitted that earlier before filing of the present case, the petitioner No.1 has given Talak on 13.06.2011 to Opposite Party No.2, however, the learned



Sub-Divisional Judicial Magistrate, Siwan without applying his judicial mind passed the order issuing process against the accused persons including the petitioners in the most mechanical way.

Heard learned A.P.P. as well as learned Counsel for the Opposite Parties.

It has been submitted on behalf of the Opposite Party No.2 that there are allegation against all the accused persons in the complaint petition so also appears from the materials collected during the course of the enquiry and only thereafter, the case is made out under Section 498 A & 406 of the Indian Penal Code and Section 4 of the Dowry Prohibition Act. The processes were issued against the accused persons, vide impugned order, however, the learned Counsel for the Opposite Party No.2 could not place any statement in the complaint petition or anything to show that any specific overt act has been alleged against the petitioners.

Having heard both sides and from perusal of the record, it appears that though there are allegations against the petitioners but they are general in nature and no specific overt act has been



alleged against the petitioners . In this case, the petitioner no.1 is husband, petitioner no.2 is brother-in-law ('Bhaisur'), petitioner nos. 3 to 5 are 'Nanad', petitioner no.6 is mother-in-law, petitioner no.7 is father-in-law and petitioner no.8 is 'Dewar'.

From perusal of the whole complaint petition, it appears that there is no specific allegation against the accused persons however, a matrimonial dispute between the Petitioner No.1 and Opposite Party No.2 as he had said to have 'Talak'. In such situation, it will not be proper to send all the accused persons for trial on the basis of general and omnibus allegation.

No doubt the petitioner no.1 is husband but so far as other persons are concerned, they are family members and as to what manner they are involved in the case has not been attributed.

In view of the facts as stated above so far application of petitioner nos. 2 to 8 for quashing the order issuing processes is concerned, it is fit to be quashed. As such, this application is allowed, order issuing processes vide impugned order with respect to petitioner nos.2 to 8 is quashed and their case is remitted back to the learned court below, for passing the detail



order afresh.

So far application of petitioner no.1 is concerned, he is husband, as such, his application for quashing the order dated 05.11.2011 is dismissed.

(Vinod Kumar Sinha, J)

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