IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.25736 of 2013

Arising Out of PS.Case No. -967 Year- 2011 Thana -PATNA COMPLAINT CASE District- PATNA

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1. Smt. Lalmani Devi @ Lal Mani Devi W/o Bharat Prasad Sharma, Resident of P.C. Colony, G/102 Kankarbagh, Police Station- Kankarbagh, District- Patna
2. Bharat Prasad Sharma S/o Late Sheo Sharan Sharma Resident of P.C. Colony, G/102 Kankarbagh, Police Station- Kankarbagh, District- Patna
3. Smt. Saroj Devi @ Saroj Devi W/o Rajiv Nayan Resident of P.C. Colony, Gyatri Mandir Road, Police Station- Kankarbagh, District- Patna

.... Petitioner/s

Versus

1. The State of Bihar.
2. Archana W/o Ranjeet Kumar, R/o G/102, P.C. Colony, Kankarbagh, P.S. Kankarbagh, District-Patna

.... Opposite Party/s

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Appearance :
For the Petitioner/s : Mr. Viveka Nand Singh
For the O.P. No. 2 : Mrs. Rekha Prasad
: Mr. Shivendra Shankar
For the State : Mr. Jharkhandi Upadhyay

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CORAM: HONOURABLE MR. JUSTICE SANJAY KUMAR

ORAL JUDGMENT

Date: 23-06-2017

1. The petitioners seek quashing of the order dated 27.02.2012 passed by the Md. Salim, Judicial Magistrate, 1st Class, Patna in Complaint Case No. 967(C) of 2011 whereby and whereunder cognizance for the offence under Sections 498A/34 of the Indian Penal Code was taken against these petitioners.

2. Heard Mr. Viveka Nand Singh, learned counsel for the petitioner, Ms. Rekha Prasad, learned counsel for the O.P. No. 2 as well as Mr. Jharkhandi Upadhyay, APP for the State.

3. The facts, in brief, is that the O.P. No. 2 filed a complaint case on the file of C.J.M., Patna alleging *inter alia* that she was married

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with Ranjeet Kumar in the year 1997. After 15 days of marriage, her husband and in-laws started torturing her in various ways as the family members of the complainant did not fulfill the demand of dowry. From the said wedlock she was blessed with two children. The accused persons used to torture and assault and have kept her in a room of the house. In compelling circumstance, she lodged a case vide Kankarbagh P.S. Case No. 207 of 2010 registered under Sections 498A/34 of the Indian Penal Code and after investigation, the police submitted final form as the mistake of fact. Thereafter, the complainant filed the protest petition. The matter was inquired by the court below and finding *prima facie* case for the offence under Section 498A/34 of the I.P.C. took cognizance and ordered for issuance of summons against the petitioners.

4. The learned counsel for the petitioners submits that the present case has been filed by the complainant only to counter the case of the husband who filed a Matrimonial Case No. 575 of 2007 before the Principal Judge, Family Court, Patna. In spite of service of notice, she did not appear and on 25.03.2010, the aforesaid court passed ex parte decree and marriage between both parties has been resolved. The court below passed the impugned order in mechanical manner without appreciating the fact, so the criminal proceeding against these petitioners who are in-laws of the complainant is abuse of process of court and is fit to be quashed.

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5. The learned counsel for the O.P. No. 2 as well as APP for the State opposed the submissions made on behalf of the petitioners. It was submitted that the O.P. No. 2 is still residing in one of the room of the house provided by the petitioners. The husband suppressed about the institution of matrimonial case and got ex parte decree, against which the O.P. No. 2 has filed a Cr. Misc. case for setting aside the ex parte decree which is pending before the Principal Judge, Family Court, Patna. The petitioners are mother-in-law, father-in-law and *nanad* of the complainant. They are residing together and they all are still torturing the complainant by keeping in one of the room of the house. They do not provide food and clothes to her. In course of inquiry, the witnesses have supported the allegation of torture and assault against the petitioners and the court below rightly took cognizance of the offence against the petitioners and other co-accuseds. It is further submitted that the complainant filed a case against her husband vide D.V. Case No. 10 of 2011 which after hearing was allowed on 21.04.2016 and the husband was directed to pay Rs. 5,000/- per month for the maintenance of the complainant and her children. The husband filed a Cr. Appeal No. 70 of 2016 which after hearing has been dismissed on 12.04.2017 by the Additional Sessions Judge-X, Patna.

6. On perusal of the evidence and materials on records, I find that the petitioner nos. 1 and 2 are in-laws of the complainant and they are

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residing with their son who is husband of the complainant. There is specific allegation that they used to torture and assault the complainant. The complainant has been kept in one of the room of the house which is jointly occupied by her husband and the petitioner nos. 1 and 2. In course of inquiry, the complainant and her witnesses have supported the allegation of torture. The court below rightly took cognizance against them. So far the petitioner no. 3 is concerned, she is the sister of the husband of the complainant. She is a married lady and is residing at different place. She has denied any manner of concern with the affairs of the complainant and her husband.

7. In view of the above facts, this application is partly allowed and the cognizance order with respect to the petitioner no. 3 (Saroj Devi) is quashed. So far the petitioner nos. 1 and 2 are concerned, they have failed to make out a case of quashing and so the proceeding will continue against them before the court below.

8. The application is, accordingly, disposed of.

(Sanjay Kumar, J)

rohit/-

AFR/NAFR	NAFR
CAV DATE	N.A.
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