

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.37645 of 2014

Arising Out of PS.Case No. -1205 Year- 2012 Thana -MUNGER COMPLAINT CASE District-
MUNGER

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1. Ramdeo Sharma, Son of Late Jagdish Sharma
2. Pappu Sharma, Son of Ramdeo Prasad Sharma
3. Rubi Sharma, D/o Late Ashok Sharma
4. Santosh Kumar Sharma, Son of Late Ashok Sharma
5. Ranjita Devi, Wife of Santosh Kumar Sharma
6. Binay Sharma @ Binay Kumar Sharma, S/o Rajendra Pd. Sharma
All resident of village- Asthan, Bariyarpur, P.O. & P.S.- Bariyarpur, District-
Munger

.... Petitioner/s

Versus

1. The State of Bihar
2. Kumari Jyoti Sikha, Wife of Kanwar Lal @ Kuran Sharma, resident of village-
Shankarpar, Nawada, P.S.- Muffasil Munger, District- Munger at present Address-
Madopur Gangotri Behind of P.S. Vaunluo Piri, District- Munger

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Hitesh Suman, Advocate.
Mr. Arbind Kumar, Advocate.

For the Opposite Party/s :

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CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR

ORAL JUDGMENT

Date: 11-10-2017

Heard learned counsel for the petitioners and learned
counsel appearing on behalf of the O.P. No. 2 and the State.

2. The petitioners seek quashing of the cognizance order
dated 25.02.2013 passed by learned Judicial Magistrate, 1st Class,
Munger in Complaint Case No. 1205(C) of 2012 thereby taking
cognizance under Section 498A of the Indian Penal Code.

3. Short facts giving rise to the case is that complainant
earlier lodged a police case vide Mathiapur P.S.Case No. 26 of 2012
dated 02.05.2012 against all accused persons including her husband



and others. However, the police submitted final form finding the case not true but on protest petition filed by the complainant, the court proceeded in enquiry and has taken cognizance.

4. Short fact, as alleged in the complaint, is that her marriage was solemnized with Karan Sharma on 28.11.2011 suppressing the fact that he was already married having one child out of the wedlock. He was living in Pune. It is alleged that in the matrimonial home her mother-in-law, elder brother of her husband, his wife and all family members of the husband used to torture and assault her in connection with further demand of 02 Katha land in Munger, ultimately on 04.05.2012 her husband along with his cousin dropped her to parents' home.

5. Learned counsel for the petitioners submits that the case was not found true by the police after investigation and it was the complainant who did not wish to live with the husband, as her parents forcibly got her married to Karan Sharma. Learned counsel also submits that no *prima facie* case is made out against these petitioners, who are uncle, cousin, married Nanad, husband of the married Nanad, brother of the husband and his wife. The complaint itself reveals that the husband was residing in Pune, however, these petitioners reside at different places and not living with the husband of the complainant, moreover, there is no specific allegation against these petitioners. He



also submits that cognizance has been taken only under Section 498A of the Indian Penal Code whereas there is specific allegation of making demand of further dowry, cognizance has not been taken under Section 4 of the Dowry Prohibition Act.

6. Contrary to that, learned counsel appearing on behalf of the complainant-O.P. No. 2 submits that it was petitioner no. 1, the uncle, who was instrumental in finalizing the marriage after taking money and all petitioners have also participated in torture in connection with demand of dowry.

7. Having considered the rival submissions and on perusal of record, the Court finds that allegation shows that the husband was employed in Pune and petitioner no. 1 is the uncle of the husband of the complainant, petitioner no. 2 cousin, petitioner no. 4 brother of the husband, petitioner no. 5 his wife, petitioner no. 3 married Nanad of the complainant and petitioner no. 6 is her husband and they all reside at different places and not living with the husband of the complainant. Initially, as per allegation in the police case, police not finding the case true submitted final form, but as far as allegations in the complaint petition is concerned, it is not specific against these petitioners, only casual reference is made by naming these petitioners; even there is absence of specific accusation that on which date or in what manner they participated and tortured the



complainant. In case of ***Geeta Mehrotra & Anr. vs. State of U.P. & Anr.*** reported in ***2013(1)PLJR 10 (SC)***, the married sister and her husband were also made accused in that case too and in that context, the Apex Court observed as under:

“It appears that there is no specific allegation against the sister and brother of the complainant’s husband as to how they could be implicated into the mutual bickering between the complainant and her husband Shyamji Mehrotra including his parents”.

The Apex Court further observed:

“Contents of the FIR does not disclose specific allegation against the brother and sister of the complainant’s husband except casual reference of their names, it would not be just to direct them to go through protracted procedure by remanding for consideration of the matter all over again by the High Court and make the unmarried sister of the main accused and his elder brother to suffer the ordeal of a criminal case pending against them specially when the FIR does not disclose ingredients of offence under Sections 498A/323/504/506 IPC and Sections 3/4 of the Dowry Prohibition Act”.

It is further observed:

“We, therefore, deem it just and legally appropriate to quash the proceedings initiated against the appellants Geeta Mehrotra and Ramji Mehrotra as the FIR does not disclose any material which could be held to be constituting any offence against these two appellants. Merely by making a general allegation that they were also involved in physical and mental torture of the complainant-Respondent No. 2 without mentioning even a single



incident against them as also the fact as to how they could be motivated to demand dowry when they are only related as brother and sister of the complainant's husband, we are pleased to quash and set aside the criminal proceedings in so far as these appellants are concerned and consequently the order passed by the High Court shall stand overruled. The appeal accordingly is allowed".

8. In the case of ***Preeti Gupta & Anr. Vs. State of Jharkhand & Anr.*** reported in ***2010(4) PLJR 36(SC)*** , the Apex Court has further observed in paragraph no. 33, which reads as follows:

"The ultimate object of justice is to find out the truth and punish the guilty and protect the innocent. To find out the truth is a Herculean task in majority of these complaints. The tendency of implicating husband and all his immediate relations is also not uncommon. At times, even after the conclusion of criminal trial, it is difficult to ascertain the real truth. The courts have to be extremely careful and cautious in dealing with these complaints and must take pragmatic realities into consideration while dealing with matrimonial cases. The allegations of harassment of husband's close relations who had been living in different cities and never visited or rarely visited the place where the complainant resided would have an entirely different complexion. The allegations of the complaint are required to be scrutinized with great care and circumspection. Experience reveals that long and protracted criminal trials lead to rancour, acrimony and bitterness in the relationship amongst the parties. It is also a matter of common knowledge that in cases filed by the complainant if the husband or the husband's relations had to remain in jail even for a few days, it would ruin the chances of amicable



settlement altogether. The process of suffering is extremely long and painful”.

9. So applying the same principles in the present context of the case, the allegation against these petitioners, who are living at different places and not along with the complainant's husband, some of them uncle and cousin of the complainant's husband as well as married Nanad and her husband and married brother and his wife residing at different places and the allegations against them do not appear specific, only casual reference of their names is given with allegation regarding demand of dowry and torture, so no specific ingredient of offence under Section 498A of the Indian Penal Code against these petitioners is found.

10. Therefore, the entire criminal proceeding inclusive of the cognizance order dated 25.02.2013 passed by the Judicial Magistrate, 1st Class, Munger in Complaint Case No. 1205C of 2012 with respect to these petitioners only, is set aside. However, it is made clear that criminal proceedings with respect to other accused will proceed in accordance with law.

(Arun Kumar, J)

Sujit/-

AFR/NAFR	NAFR
CAV DATE	NA
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