

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.20269 of 2013

Arising Out of PS.Case No. -4174 Year- 2012 Thana -VAISALI COMPLAINT CASE District-
VAISHALI(HAJIPUR)

- =====
1. Rajesh Kumar S/O Late Yogendra Chaudhary Resident Of House No. 79/20 L.I.G.H. Lohiya Nagar Kankarbagh, Patna.
 2. Ramesh Vyahut S/O Late Yogendra Chaudhary Resident Of House No. 79/20 L.I.G.H. Lohiya Nagar Kankarbagh, Patna.
 3. Anil Kumar S/O Kameshwar Chaudhary Resident Of House No. 79/20 L.I.G.H. Lohiya Nagar Kankarbagh, Patna.
 4. Surendra Kumar S/O Rajendra Prasad Gupta Resident Of Village- Shankar Saraiya, P.S- Turkauliya, District- East Champaran.
 5. Nilam Devi W/O Vyas Prasad Resident Of Village- Chhata Dumariya Ward NO. 5, District- East Champaran At Motihari.
 6. Punam Devi W/O Madanjee Resident Of Village- Asochak, Nand Lal Chhapra, P.S- Ram Krishna Nagar, District- Patna.
 7. Madanjee @ Madan Prasad S/O unknown Resident Of Village- Asochak, Nand Lal Chhapra, P.S- Ram Krishna Nagar, District- Patna.

.... Petitioner/s

Versus

1. The State Of Bihar
2. Sarita Devi W/O Rajesh Kumar And D/O Raj Narayan Chaudhary Resident Of Village- Lalganj, Maida Toil, P.S- Lalganj, District- Vaishali.

.... Opposite Party/s

=====

Appearance :

For the Petitioner/s : Mr. Anil Kumar
For the Opposite Party/s : Mr. Arun Kumar Sinha
For the State : Mr. Nagendra Prasad, APP

=====

CORAM: HONOURABLE MR. JUSTICE SANJAY KUMAR

ORAL JUDGMENT

Date: 07-09-2017

The learned counsel for the petitioners submits that the petitioner No. 1 (Rajesh Kumar), who was the husband of the Opposite Party No. 2, has died and so, he does not want to press this application on his behalf.

In the facts and circumstances, this application with respect



to petitioner no. 1 is dismissed.

2. This application has been filed to quash the order dated 13.03.2013 passed by the learned S.D.J.M, Vaishali in Complaint Case No. 4174 of 2012 whereby and whereunder the learned Magistrate finding prima facie case for the offence under Sections 498-A, 379 and 323 of the Indian Penal Code and Section 3 /4 of the Dowry Prohibition Act, took cognizance and summoned the petitioners.

3. Heard both sides.

4. The Opposite Party No. 2 filed a complaint case on the file of the learned C.J.M. alleging inter alia that she was married with Rajesh Kumar on 05.03.2003. The complainant visited at the place of her husband at Motihari where all the accused persons started torturing her for bringing an amount of Rs. 1,00,000/- as further dowry for starting business. The said demand was not fulfilled in consequence of which, she was assaulted and after snatching her entire belongings, she was ousted from the matrimonial house.

5. The learned counsel for the petitioners submits that these petitioners are distant relatives having no concern with the affairs of the complainant or her husband. The petitioners are brother-in-laws, maternal brother-in-law and sister-in-law of the complainant. They are residing at different place quite unconcerned with the affairs of the



complainant or her husband. The complainant herself deserted her husband when she was living at Patna. The husband of the complainant attempted to restore good relation, but on account of rigid attitude of the complainant, the relationship could not be restored. The husband had filed a Matrimonial Case No. 14 of 2010 under Section 9 of the Hindu Marriage Act on 11.01.2010. In the said matrimonial suit, the complainant appeared and filed a written statement wherein she did not deny the allegation of her desertion. The complainant herself left the place of her husband and started residing at the place of her father. The husband of the complainant on the pressure of the local people started making payment of Rs. 2500/- for her maintenance since 18.08.2012. It has been further submitted that the husband of the complainant filed a Divorce Case No. 127 of 2012 in the court of Principal Judge, Family Court, East Champaran at Motihari. The complainant after receiving notice of the said divorce case has filed the present Complaint Case No. 4174 of 2012 in the court of the learned C.J.M, Hajipur as counter blast to the case of the husband of the complainant. The allegation of demand of money and torture is omnibus against the petitioners and no offence under Section 498-A of the Indian Penal Code or Section 3 /4 of the Dowry Prohibition Act is made out. In absence of any material against the petitioners on record, the criminal prosecution of these petitioners



would be an abuse of process of Court and so, the impugned order is fit to be quashed.

6. The learned counsel for the Opposite Party No. 2 as well as the learned APP for the State opposed the submissions.

7. On perusal of complaint petition and documents on record, I find that the petitioners are in-laws of the complainant and they are residing at different place. The documents on record further show that the main grievance of the complainant was against her husband. The complainant voluntarily left her husband's place and started residing at the place of her father. It further appears that the husband of the complainant filed a matrimonial suit for restitution of conjugal life in the year 2009 and a divorce case in the year 2012. The complainant after receipt of notices has filed the present complainant case.

8. In this regard, I would like to refer the cases of Neelu Chopra Vs. Bharti (2009)10, SCC 184. Geeta Mehrotra and others Vs. State of UP & others (2012)10 SCC page 741, 2013(2) PCCR 210 (S.C.) and Preeti Gupta & others Vs. State of Jharkhand & others (2010) 7, SCC page 667 wherein the Hon'ble Apex Court has reiterated that in absence of specific allegation and prima facie case against co-accuseds, the order taking cognizance will be bad in law and that will be an abuse of process of court.



The facts of the present case is similar to the case decided by Apex Court. These petitioners are in-laws of the complainant and the allegation against these petitioners is omnibus in nature. In such circumstance, criminal prosecution of these petitioners would be an abuse of process of Court.

9. In the discussions made above, this application is allowed and the order dated 13.03.2013 passed by the learned S.D.J.M, Vaishali in Complaint Case No. 4174 of 2012 is hereby set aside.

(Sanjay Kumar, J)

ajay gupta/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	14.09.2017
Transmission Date	14.09.2017

