

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.13874 of 2014

Arising Out of Case No. -221 Year- 2013 Thana -DARBHANGA COMPLAINT CASE District-
DARBHANGA

- =====
1. Naseem Ahmad Shakeel Son of Md. Shakeel
 2. Sarwat Naseem Wife of Naseem Ahmad Shakeel
 3. Talat Fatema @ Talat Parween
 4. Zeenat Fatema @ Zeenat Parween
 5. Nuzhat Fatema

All three daughter of Naseem Ahmad Shakeel,
All resident of village-Sidhauli, P.S.-Ashok Paper Mills, District-Darbhang.

.... Petitioner/s

Versus

1. State Of Bihar
2. Md. Sabir, Son of Md. Zubair, Resident of village-Sidhauli, P.S-Ashok Paper Mill, District-Darbhang.

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr.

For the Opposite Party/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR

ORAL JUDGMENT

Date: 08-09-2017

Heard learned counsel for the petitioners and the State.

2. Petitioners are accused in Complaint Case No. 221 of 2013. Petitioner no. 5, one of the accused, is the wife of the complainant. Petitioners seek quashing of order dated 18.07.2013 passed by the Judicial Magistrate, 1st Class, Darbhanga whereby he has taken cognizance of offence under Sections 323 and 380 of the Indian penal Code.

3. Short fact, giving rise to the complaint, is that complainant's house and house of his in-laws, who are accused in this case, along with his wife, are located in the same colony and it is



alleged that his wife always used to take away household articles and handed over it to her parents home. On the alleged date of occurrence, she handed over a bag containing jewellery worth Rs. 4-5 lacs to her sister, the complainant objected then all accused persons came to his house, abused and assaulted and also took away the bag.

4. Learned counsel for the petitioners contends that complainant has lodged this case against his wife, father-in-law, mother-in-law and sister of his wife levelling frivolous allegation of theft for the reason that his wife, petitioner no. 5, had lodged a case under the Protection of Women from Domestic Violence Act, 2005 against him on 24.01.2013 though the present complaint filed by the husband is dated 22.02.2013 mentioning therein alleged occurrence dated 25.09.2012 and there is no plausible explanation mentioned in the complaint for lodging the complaint after such inordinate delay. Learned counsel placed reliance upon the case of **Harmanpreet Singh Ahluwalia & Ors. v. State of Punjab & Ors.** reported in (2009) 7 SCC 712. Learned counsel further elaborates that in the case of **Harmanpreet Singh Ahluwalia** (supra), there was also dispute in between wife and husband and allegation levelled against wife is that she committed theft of taking all her belongings and withdrawing amount from the joint account of the parties. The Hon'ble Supreme Court held that the articles said to be committed theft are in joint



possession, so no offence of theft would be made out. In the present case also, the allegation is of taking away jewellerys by the wife but that jewellerys were in possession of the wife, so taking away jewellerys does not amount to theft.

5. Contrary to that, learned counsel appearing on behalf of the complainant submits that cognizance has been taken in the matter after considering allegation levelled in the complaint as well as statements of witnesses recorded during enquiry stage.

6. The admitted position is that complainant, the husband of the petitioner no. 5, Nuzhat Fatema, and rests other petitioners are parents of petitioner no. 5, Nuzhat Fatema and her sister. Son-in-law of the petitioners' no. 1 and 2 is the complainant who has filed the case against his wife and her parents levelling allegation of committing theft by his wife. There is matrimonial discord between wife and husband, which is apparent from the fact that prior to lodging of the present complaint case, Nuzhat Fatema (petitioner no. 5) had filed a case under the Protection of Women from Domestic Violence Act, 2005 against her husband and other family members alleging that her husband, after marriage, left for Soudi Arabia and there got married with a Philippine girl, whenever he used to come India, he ill-treated her, thereafter present complaint has been filed by the husband.



7. The allegation as in the present complaint of taking away jewellerys by wife from her matrimonial home does not amount to theft because jewellerys of the wife were in her own possession, so present complaint appears malicious in nature in order to wreck personal vengeance against wife and her parents and other family members due to matrimonial discord. Therefore, the entire criminal proceeding inclusive of the cognizance order dated 18.07.2013 passed by the learned Judicial Magistrate, 1st Class, Darbhanga in Complaint Case No. 221 of 2013 is set aside. The application stands allowed.

(Arun Kumar, J)

Sujit/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	23.09.2017
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