

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.36182 of 2014

Arising Out of PS.Case No. -878 Year- 2011 Thana -ROHTAS COMPLAINT CASE District-
SASARAM (ROHTAS)

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1. Durga Shankar Tiwary @ Durga Tiwari son of Shri Sachchidanand Tiwary,
Resident of village - Maheshpur, P.S . Koragahar District - Rohtas (Sasaram)

.... Petitioner/s

Versus

1. The State of Bihar
2. Vindhyachali Devi D/o Late Jagdish Tiwari , Resident of village - Lilori ,
P.S. - Baghaura , District - Rohtas (Sasaram)

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Rajesh Kumar Mishra
For the Opposite Party/s : Mr. Akhileshwar Dayal, APP

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CORAM: HONOURABLE MR. JUSTICE SANJAY KUMAR

ORAL JUDGMENT

Date: 28-08-2017

This application under Section 482 of the Code of Criminal Procedure has been filed to quash the order dated 23.03.2013 passed by the learned Judicial Magistrate, 1st Class, Sasaram (Rohtas) in Complaint Case No. 878 of 2011 whereby and whereunder the Magistrate finding prima facie case for the offence under Section 498-A of the Indian Penal Code summoned the petitioner.

2. Heard both sides.

3. The facts in brief is that the Opposite Party No. 2, who is the wife of this petitioner lodged an F.I.R. with Baghaura Police Station alleging therein that after institution of Kargahar P.S. Case No. 141 of 2009 for the offence 498-A of the Indian Penal Code, her



husband took her to his house assuring to keep nicely, but on the very next date he and his family members snatched her entire belongings, assaulted and ousted from their house. The police conducted investigation and found the allegation false. They submitted final form on 30.06.2010 as case untrue. Thereafter, the Opposite Party No. 2 filed protest petition on the basis of which Complaint Case No. 878 of 2011 was registered and after enquiry cognizance for the offence was taken by the court below.

4. The learned counsel for the petitioner submits that the Opposite Party No. 2 lodged an F.I.R. against the petitioner for alleged torture, assault and demand of dowry, which was registered as Karegahar P.S. Case No. 141 of 2009. The petitioner was sent to jail and he was allowed bail by the learned Sessions Judge on 22.12.2009 as per the order passed in B.P. No. 1754 of 2009. The Opposite Party No. 2 in order to harass this petitioner has lodged another criminal case vide Baghaula P.S. Case No. 27 of 2010 dated 05.04.2010 under Sections 498-A, 379 and 325/34 of the Indian Penal Code. The wife of this petitioner never visited at his place. After institution of the first F.I.R., she always remained at her parents' house and so, there was no occasion of her visit at the place of the petitioner or assault or snatching any article from her possession. The matter was investigated and police found the case untrue and submitted final form. There are contradictions in the



statement of the Opposite Party No. 2 given before the court and allegation made in the protest petition. The learned Magistrate without appreciating the material on record has passed the impugned order in mechanical manner without applying judicial mind and so, the impugned order is fit to be quashed.

5. The learned APP, on the other hand, opposed the submission. It was submitted that both the cases were lodged for two different occurrence and so, the Magistrate has rightly taken cognizance on protest petition.

6. The Opposite Party No. 2 in spite of service of notice did not appear to controvert the submission of the petitioner.

7. On perusal of the impugned order as well as annexures on record, I find that this petitioner is facing trial in Karegahar P.S. Case No. 141 of 2009. In that case, the petitioner was granted bail on merit. The matter was enquired by the police and it was found that she never visited at the place of her husband and so, no occurrence of assault or snatching any article took place at the place of her husband. The police submitted final form as case untrue. The Opposite Party No. 2 filed a protest petition in which she alleged that on the assurance of her husband, the family members sent the complainant at the place of her husband on 03.04.2010, but on the following day i.e. 04.04.2010, her husband and his family members brutally assaulted, snatched gold chain and ousted from their house



saying that she will not be allowed to live in the house unless the demand of motorcycle was fulfilled. The statement of the complainant was recorded on S.A. in which she has stated the fact in different manner by stating that a compromise was entered and her husband took her to Sasural. No specific date of compromise has been disclosed by the complainant. There is contradiction in the statement of the complainant on S.A. and protest petition. The petitioner is already facing trial for the said offence of torture and assault. The allegation of torture has been found false in subsequent lodged F.I.R. The allegation in the present case is similar to the allegation made in the earlier F.I.R. The prosecution of this petitioner in second case, which was found untrue during investigation would amount to an abuse of process of Court.

8. In the facts and circumstances of the face, the impugned order taking cognizance in Complaint Case No. 878 of 2011 (Protest Petition) is hereby quashed and this application is allowed.

(Sanjay Kumar, J)

ajay gupta/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	01.09.2017
Transmission Date	01.09.2017

