

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.35545 of 2014

Arising Out of PS.Case No. -1216 Year- 2010 Thana -GOPALGANJ COMPLAINT CASE District-
GOPALGANJ

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1. Lallan Sah Son of Mahendra Sah
2. Ram Kumar Sah Son of Mahendra Sah
3. Shiv Shankar Sah Son of Mahendra Sah
4. Mahendra Sah Son of Late Jagdeo Sah
5. Madhuri Devi Wife of Shiv Shankar Sah
6. Anita Devi Wife of Ram Kumar Sah,
All are resident of village- Harpur Bazar, P.O.- Sakhe Khas, P.S.- Uchkagaon,
District- Gopalganj.

.... Petitioner/s

Versus

1. The State of Bihar
2. Rina Devi Wife of Lalan Sah, D/o Ravindra Prasad, resident of village- Nawada
Parsouni, P.S.- Uchkagaon, District- Gopalganj.

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Dhramveer, Advocate
For the Opposite Party No. 2 : Mr. Yogendra Pd. Sinha, Advocate
For the State : Mr. Akhileshwar Dayal, APP

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CORAM: HONOURABLE MR. JUSTICE SANJAY KUMAR

ORAL JUDGMENT

Date: 09-08-2017

Heard Mr. Dharmveer, learned counsel for the
petitioners and Mr. Yogendra Prasad Sinha, learned counsel appearing
on behalf of opposite party no. 2 as well as Mr. Akhileshwar Dayal,
learned counsel representing the State.

2. This application under section 482 of the Criminal
Procedure Code, has been filed for quashing the order dated 11th
February 2011 passed by learned Sub-Divisional Judicial Magistrate,
Gopalganj in Complaint Case No. 1216 of 2010, Tr. No.2952 of 2011,



whereby and whereunder learned Sub-Divisional Judicial Magistrate, finding *prima facie* case for the offence under section 498(A) of the Indian Penal Code and section 3/4 of the Dowry Prohibition Act, summoned the petitioners.

3. The petitioners are husband and in-laws of opposite party no. 2.

4. Learned counsel for the petitioners does not want to press this application with respect to petitioner no. 1, who is husband of opposite party no. 2. Accordingly, this application with respect to petitioner no. 1 is dismissed, as not pressed.

5. So far the prayer of other petitioners is concerned, the complainant has alleged that since the date of marriage which took place on 05.06.2002 her husband and in-laws started torturing her in various ways and also demanded Rs. 10,000/- as well as a motor cycle for keeping her in their house. It has further been submitted that on 04.05.2010 the husband and in-laws assaulted the complainant and after snatching her entire belongings, ousted her from their house. The complainant is residing at the place of her parents. The complainant on her solemn affirmation and other witnesses supported the allegation of torture, assault and demand of dowry.

6. The Court below finding *prima facie* case, summoned the petitioner for their trial.



7. It has been submitted that petitioner nos. 2 to 6 are in-laws related as brothers, father and brothers' wife of the husband of the complainant.

8. The allegation of demand of money and motor cycle appears specific against the husband of the complainant. Petitioner nos. 2 to 6 have denied any manner of concern with the affairs of complainant or her husband.

9. In this regard, I would like to refer the Ruling reported in **(2009) 10 SCC 184, [Neelu Chopra and another vs. Bharti], (2012) 10 SCC 741 [Geeta Mehrotra and another vs. State of Uttar Pradesh and others] and (2010) 7 SCC 667 [Preeti Gupta and another vs. State of Bihar and others]**, wherein the Hon'ble Apex Court has held that in absence of specific allegation and *prima facie* case against co-accused, the order taking cognizance will be bad in law and that will be an abuse of process of Court. The Hon'ble Apex Court has further observed that in the matter arising out of matrimonial cases, it is a tendency to implicate all family members in the First Information Report, actually mentioning their names and claim their active involvement, as such, order taking cognizance against them would not be justified.

10. In the case in hand, I find that the marriage of complainant took place on 05.06.2002 and from the said wedlock,



opposite party no. 2 (complainant) has been blessed with a son, who was aged about 2 ½ years on the date of filing of complaint case, i.e. on 05.05.2010. The complainant has not given any specific date of any overt act at the instance of any of the petitioners. The main grievance of complainant appears against her husband. In such circumstances, criminal prosecution of petitioner nos. 2 to 6, who are in-laws would be an abuse of process of Court, which is not sustainable in the eyes of law in view of the observation given by the Hon'ble Apex Court, as stated above.

11. In view of the aforesaid discussion, the order dated 11.02.2011 taking cognizance so far petitioner nos. 2 to 6, namely, Ram Kumar Sah, Shiv Shankar Sah, Mahindra Sah, Madhuri Devi and Anita Devi is concerned, is quashed. However, the husband will face trial for the aforesaid offence.

12. Accordingly, this criminal application is disposed of in the manner indicated above.

(Sanjay Kumar, J)

Mahesh/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	15.08.2017
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