

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.36462 of 2014

Arising Out of PS.Case No. -52 Year- 2011 Thana -SHEKHPURA COMPLAINT CASE District-
SEKHPURA

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1. Ashraf Ali @ Md. Ashraf Ali S/o Late Md. Shakil @ Naga
2. Sarwari Khatoon W/o Late Md. Shakil @ Naga
3. Irshad Alam @ Md. Irshad Alam S/o Late Md. Shakil @ Naga
4. Ishrat Khatoon @ Chanda D/o Late Md. Shakil @ Naga All Resident of Village
Kaitha, P.S. Chandradeep, District Jamui.

.... Petitioner/s

Versus

1. The State of Bihar.
2. Nagma Khatoon W/o Ashraf Ali Resident of Village Kaitha, P.S. Chandradeep,
District Jamui. At present reside at D/o Md. Serajuddin, Village Nabinagar Kakrar,
P.S. Ariyari, District Sheikhpura.

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Syed Rizwanul Haque, Advocate

For the Opposite Party/s : Mr. R.B. Roy Raman (APP)

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CORAM: HONOURABLE MR. JUSTICE S. KUMAR

ORAL JUDGMENT

Date: 15-11-2017

This petition under Section 482 of Cr.P.C. has been
filed for quashing the order dated 14.03.2014 by which the discharge
petition filed by the petitioners in Case no. 52(C) of 2011 was rejected
by the learned S.D.J.M., Sheikhpura.

2. Briefly stated, the facts of the case is that
complainant opposite party No. 2 Nagma Khatoon filed a Complaint
Case no. 52(C) of 2011 in the Court of learned Chief Judicial
Magistrate, Sheikhpura for alleged offence under Section 498 (A) read
with 34 of I.P.C. and 3/4 of Dowry Prohibition Act against the



petitioners.

3. It has been alleged in the Complaint Petition that the marriage of complainant opposite party No. 2 was solemnized with Ashraf Ali and during Rokhsati on 17.02.2010 the accused petitioners demanded a motorcycle, and for purchasing the motorcycle a sum of Rs. 50,000/- was given and then Rokhsati was performed. It has been further alleged that the accused petitioners again demanded Rs. 2 lakhs and on account of non-fulfillment of said demand assaulted complainant opposite party No. 2 then Rs. 20,000/- was given to accused persons, but the behaviour of accused petitioners did not improve and they put pressure on the complainant opposite party No. 2 to bring Rs. 2 lakhs. On 11.12.2010 the accused petitioners assaulted the complainant and driven her out from matrimonial home then she lodged a complaint in Chandradeep Police Station and thereafter the matter was compromised on 12.12.2010. However subsequent thereto the accused petitioners continued assaulting the complainant and again driven her out for demand of Rs. 2 lakhs or second marriage will be solemnized, even Panchayati held in this matter failed and demand of Rs. 2 lakh continued. On the basis of complaint petition filed by opposite party No. 2 the learned S.D.J.M., Sheikhpura took the cognizance under Section 498(A) of the Indian



Penal Code by order dated 12.05.2011.

4. The petitioners filed a matrimonial Case No. 102 of 2013 under Section 281 of the Mohamdan Law on 14.07.2013 in the Court of Principal Judge, Family Court, Jamui, the complainant opposite party No. 2 appeared and filed a petition on 08.01.2014 stating therein that she wants to live with her husband if she is kept with dignity and honour and not tortured by them and said petition was allowed by order dated 18.01.2014 on the basis of compromise.

5. The petitioners on 28.11.2013 filed a petition under Section 245 of Cr.P.C. for their discharge, but the learned S.D.J.M., Sheikhpura dismissed the said petition by impugned order dated 14.03.2014.

6. The opposite party No. 2 appeared in this case and filed a counter affidavit stating therein that accused petitioners did not honour their commitment of keeping complainant opposite party No.2 with dignity and honour and continued torturing her.

7. The accused petitioners obtained favourable order in Anticipatory Bail Petition on the basis of compromise petition but after some time again started torturing her and ousted her from matrimonial home and the petitioner without taking permission from the Trial Court went to Kuwait. The learned Trial Court after



going through the materials available on record found sufficient evidence for framing charges against the accused petitioners and thereafter dismissed their discharge petition by its order dated 14.03.2014. The trial Court has found that there is sufficient materials available on record against the accused petitioners for framing charge under Section 498(A) of I.P.C. and thereafter rejected their discharge petition.

8. The Apex Court in its judgment and order as reported in 2012 (9) SCC 460 in para 17 held as following:-

17. Framing of a charge is an exercise of jurisdiction by the trial court in terms of Section 228 of the Code, unless the accused is discharged under Section 227 of the Code. Under both these provisions, the court is required to consider the “record of the case” and documents submitted therewith and, after hearing the parties, may either discharge the accused or where it appears to the court and in its opinion there is ground for presuming that the accused has committed an offence, it shall frame the



charge. Once the facts and ingredients of the Section exists, then the court would be right in presuming that there is ground to proceed against the accused and frame the charge accordingly. This presumption is not a presumption of law as such. The satisfaction of the court in relation to the existence of constituents of an offence and the facts leading to that offence is a sine qua non for exercise of such jurisdiction. It may even be weaker than a prima facie case. There is a fine distinction between the language of Sections 227 and 228 of the Code. Section 227 is the expression of a definite opinion and judgment of the Court while Section 228 is tentative. Thus, to say that at the stage of framing of charge, the Court should form an opinion that the accused is certainly guilty of committing an offence, is an approach which is impermissible in terms of Section 228 of the Code.



9. Under the facts and circumstances of this case and in view of law laid down by Apex Court, I am not inclined to interfere with the order passed by the Trial Court dismissing the discharge petition of petitioners and framing of charge against accused petitioners.

10. The Petition stands dismissed.

(S. Kumar, J)

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CAV DATE	
Uploading Date	
Transmission Date	

