

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.9089 of 2014

Arising out of case No. -2932 Year- 2012 Thana -VAISALI COMPLAINT CASE District-
VAISHALI (HAJIPUR)

- =====
1. Panchanand Prasad S/O Baldeo Sahay
 2. Sudhir Kumar Sinha @ Sudhir Kumar, S/O Panchanand Prasad
 3. Punam Sinha @ Punam Devi W/O Sudhir Kumar Sinha
 4. Most. Ramrati Devi W/O Late Shankar Prasad

All are Resident of Mohalla- Atadah Kachi Pakki Road, P.S.-
Kazimohammadpur, District- Muzaffarpur

.... Petitioner/s

Versus

1. The State of Bihar
2. Sneha Verma D/O Virendra Nath Prasad "Shashi" W/O Pankaj Kumar Resident
of Mohalla- Atadah Kachi- Pakki Road Near Sahu Market, P.S.-
Kazimohammadpur, District- Muzaffarpur, Presently Resident of Mohalla-
Bagmali, P.S.- Hajipur, District- Vaishali.

.... Opposite Party/s

with

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Criminal Miscellaneous No. 16298 of 2014

Arising out of case no. -2932 Year- 2012 Thana -VAISALI COMPLAINT CASE District-
VAISHALI (HAJIPUR)

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Pankaj Kumar, Son of Panchanand Prasad, Resident of Mohalla- Atadah Kachi-
Pakki Road, P.S- Kazimohammadpur, District- Muzaffarpur.

.... Petitioner/s

Versus

1. The State of Bihar
2. Sneha Verma, Daughter of Virendra Nath Prasad Shashi, Wife of Pankaj Kumar
Resident of Mohalla- Atadah Kachi- Pakki Road Near Sahu Market, P.S.-
Kazimohammadpur, District- Muzaffarpur, Presently Resident of Mohalla-
Bagmali, P.S- Hajipur, District- Vaishali.

.... Opposite Party/s

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Appearance :

(In Cr.Misc. No.9089 of 2014)

For the Petitioner/s :

For the Opposite Party/s:

(In Cr.Misc. No.16298 of 2014)



For the Petitioner/s :

For the Opposite Party/s :

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CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR

ORAL JUDGMENT

Date: 01-08-2017

As both the petitions are directed against the same impugned order of cognizance dated 03.11.2012, so being disposed of by this common judgment.

2. Heard learned counsel for the parties.

3. In both quashing petitions, filed under Sections 482 Cr.P.C., 1973 the petitioners seek setting aside of order dated 03.11.2012 passed by the S.D.J.M., Vaishali in Trial No. 4264 of 2012 arising out of Complaint Case No. 2932 of 2012, whereby he has taken cognizance of offence under Sections 498A of the Indian Penal Code and Section 4 of the Dowry Prohibition Act and issued summons against them to stand trial.

4. The facts, as stated in complaint, in brief, is that the complainant was married with Pankaj Kumar (petitioner in Cr. Misc. No. 16298 of 2014) in the year 2008 and she came to matrimonial home after the marriage. Thereafter, all accused persons started torturing her on account of non-fulfillment of demand of motorcycle promised to be given in the marriage. It is also alleged that *Bhabhi* of her husband actively participated in torturing her, further learnt that she had illicit affair with her husband, the complainant saw them



together several times in compromising position. It is also alleged that on 25.08.2012, accused persons brutally assaulted, made an attempt on her life and ousted from matrimonial home. It is alleged that prior to the occurrence, on 14.01.2012, her husband also assaulted in that connection and on 08.07.2012 and all jewellerys including all her belongings was kept by the accused persons.

5. It is submitted on behalf of the petitioners that in Cr. Misc. No. 9089 of 2014, petitioners are father-in-law, elder brother of the husband, sister-in-law (*Bhabhi*) of the husband of the complainant and petitioner no. 4 is the mother of the wife of the elder brother of the husband of the complainant, who resides at another place and there is no specific allegation against these petitioners mentioning any overt act relating to demand of dowry or committing any torture upon the complainant. There is no injury to the complainant despite the allegation of assault. It is further contended that against the husband also, there is no specific allegation. Learned counsel placed reliance on a judgment of the Hon'ble Supreme Court in the case of ***Geeta Mehrotra & Anr. v. State of Uttar Pradesh & Anr.*** reported as (2012) 10 SCC 741. It is further submitted that petitioner husband filed a Divorce Suit No. 285 of 2012 before the Principal Judge, Family Court and by order dated 15.06.2013, decree of divorce was passed *ex parte*.



6. Whereas learned counsel for the O.P. No. 2 submits that there is specific allegation against the husband of the complainant though there is general allegation against rest of the petitioners. The husband was granted anticipatory bail by this Court on condition of paying maintenance amount of Rs. 1500/- per month to the complainant but the order is not being complied. He submits that *ex parte* order of decree of divorce was passed in favour of the husband and on the basis of the same, complainant has filed miscellaneous case for setting aside that order before the court of Principal Judge, Family Court.

7. Now, let us examine the facts stated in the complaint. In this regard, there is specific averment in the complaint that on 19.04.2008, complainant came to her matrimonial house after solemnization of marriage thereafter all accused persons started torturing her as her father could not give motorcycle in the marriage. Here also, there is specific allegation of active participation against her husband and his *Bhabhi*, but there is no elucidation of the act of torture committed by the *Bhabhi* (sister-in-law of the complainant) to her. Another allegation against her is that she had illicit relationship with the complainant's husband. Further, allegation with regard to torture is that on 25.08.2012, all accused persons assaulted the complainant and ousted from her matrimonial home. So the allegation



explicitly shows absence of any specific allegation of committing torture as well as of making further demand of dowry against the father-in-law (petitioner no. 1), elder brother and his wife (petitioner no. 2 and 3) and mother of the petitioner no. 3 who reside at different place. In the case of **Geeta Mehrotra** (supra), there is reference of other decisions of the Hon'ble Supreme Court, the case of **G.V.Rao v. L.H.V. Prasad; {(2000) 3 SCC 693: 2000 SCC (Cri) 733}**, wherein it is held that High Court should have quashed the complaint arising out of a matrimonial dispute wherein all family members had been roped into the matrimonial litigation. The observation made in the said judgment is as follows:

“12. There has been an outburst of matrimonial disputes in recent times. Marriage is a sacred ceremony, the main purpose of which is to enable the young couple to settle down in life and live peacefully. But little matrimonial skirmishes suddenly erupt which often assume serious proportions resulting in commission of heinous crimes in which elders of the family are also involved with the result that those who could have counseled and brought about rapprochement are rendered helpless on their being arrayed as accused in the criminal case. There are many other reasons which need not be mentioned here for not encouraging matrimonial litigation so that the parties may ponder over their defaults and terminate their disputes amicably by mutual agreement instead of fighting it out in a court of law where it takes years and years to conclude and in that process the parties lose their 'young' days in chasing their 'cases' in different courts.”

8. There is also reference of another land mark judgment of the Hon'ble Supreme Court delivered in the case of **B.S.Joshi v.**



State of Haryana reported as ***{(2003) 4 SCC 675 :2003 SCC(Cri) 848:AIR 2003 SC 1386}***. In the said judgment, the Hon'ble Supreme Court has observed as under:

“22. In yet another case reported in B.S.Joshi v State of Haryana, it was observed that:

14. There is no doubt that the object of introducing Chapter XX-A containing Section 498-A in the Penal Code was to prevent torture to a woman by her husband or by relatives of her husband. Section 498-A was added with a view to punish the husband and his relatives who harass or torture the wife to coerce her or her relatives to satisfy unlawful demands of dowry.”

9. In ***Geeta Mehrotra*** (supra) case, the Hon'ble Supreme Court has held that if the FIR does not disclose specific allegation against accused, moreso, against the co-accused specially in the matter arising out of a matrimonial dispute would be clear abuse of the legal and judicial process to mechanically send the named accused in the FIR to undergo trial.

10. In the case at hand, as earlier discussed, there is no specific allegation against the relatives of the husband of the complainant who are the petitioners in Cr. Misc. No. 9089 of 2014, so continuation of the criminal proceeding against them would be abuse of the process of the court, hence, order taking cognizance dated 03.11.2012 and subsequent criminal proceeding in Complaint Case No. 2932 of 2012 with regard to only petitioners of Cr. Misc. No.



9089 of 2014 pending in the court of the S.D.J.M., Vaishali is hereby set aside. Cr. Misc. No. 9089 of 2014 stands allowed.

11. However, the case of Pankaj Kumar, petitioner of Cr. Misc. No. 16298 of 2014 stands on different footing. He is the husband of the complainant moreover allegation against him is specific so there is no interference in the cognizance order dated 03.11.2012 against him so he requires to stand trial in the case. Cr. Misc. No. 16298 of 2014 stands dismissed.

(Arun Kumar, J)

Sujit/-

AFR/NAFR	AFR
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