

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.34149 of 2014

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1. Shivjee Pandit Son of Late Chhathu Pandit
 2. Sikila Devi W/O Shivjee Pandit Both are Resident of Village- Mau Bazar, P.S. Vidyapati Nagar, District- Samastipur.

.... Petitioners

Versus

1. The State of Bihar
2. Sanju Devi W/O Vishnu Kant Pandit, D/O Baleshwar Pandit Both are Resident of Village- Mau Bazar, P.S. Vidyapati Nagar, District- Samastipur. Present Address Resident of Village- Rani, P.S. Bachhwara, District- Begusarai, Naihar's Address- Jalalpur, P.S.- Dalsingsarai, District- Samastipur.

.... Opposite Parties

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Appearance :

For the Petitioners	:	Mr. Jai Prakash Singh, Advocate
For the Opposite Party No.2	:	Mr. Parmeshwar Mehta, Advocate
For the State	:	Mr. Ram Sumiran Rai, APP

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CORAM: HONOURABLE MR. JUSTICE SANJAY KUMAR

ORAL JUDGMENT

Date: 24-08-2017

Heard.

2. This application under Section 482 of the Cr.P.C. has been filed to quash the order dated 12.07.2012 passed by SDJM, Begusarai in Complaint Case No.74 of 2012. The court below as per impugned order, finding prima-facie case for the offence under Sections 498A, 323 and 379/34 of the IPC and Section 4 of the Dowry Prohibition Act ordered for issuance of summons against the petitioners.

3. The Opposite Party No.2 filed a complaint case on the file of CJM alleging inter-alia that after the death of her first husband, she married with Kishun Kant Pandit and thereafter she along with her three children started residing with her second husband and in-laws. After few months of her marriage the husband and in-laws started demanding Rs.1,00000/- and one motorcycle. The said demand was not fulfilled and so her husband and in-laws assaulted and after



snatching her entire belongings ousted from their house.

4. Learned counsel for the petitioners submits that the Opposite Party No.2 was earlier married with one Sanjay Pandit and from the said wed lock she was blessed with three children. After the death of first husband, the Opposite Party No.2 was married with Kishun Kant Pandit who is own sister's son of the first husband. The marriage was performed with the consent of both the parties and there was absolutely no demand of any dowry. The petitioners are parents-in-laws of Opposite Party No.2. The complainant Opposite Party No.2 herself left the house and started residing at her father's place and thereafter went at the place of her first husband. The allegation of torture at the instance of in-laws does not arise and they had no occasion to visit at her paternal place or at the place of her first husband. The court below has/had no territorial jurisdiction to entertain the complaint petition. The learned court below without applying judicial mind has taken cognizance against the petitioners and so the impugned order is fit to be quashed.

5. Learned counsel for the Opposite Party No.2 has opposed the submission. It was submitted that the charges have been framed against the petitioners and so at this stage, the cognizance order cannot be quashed.

6. On perusal of impugned order and complaint petition, I find that the main allegation of torture is against the husband. The complainant was married with one Sanjay Pandit and from the said wed-lock she was blessed with three children. After the death of first husband, the Opposite Party No.2 married with the son of the present petitioners. The husband is the own sister's son of the first husband of the complainant. The husband has challenged the validity of his marriage by filing a Divorce Case no.152 of 2011 on 08.09.2011 and after filing of divorce case the complainant has filed the present complaint case no.74C of 2012 on 10.01.2012. The allegation of torture and demand of dowry appears



omnibus against the petitioners who are parents-in-laws.

7. In this regard, I would like to refer the cases of Neelu Chopra vs. Bharti (2009) 10, SCC 184, Geeta Mehrotra and others vs. State of UP & Others (2012) 10 SCC page 741, 2013(2) PCCR 210 (SC) and Preeti Gupta and others vs. State of Jharkhand & Others (2010) 7, SCC page 667 wherein the Hon’ble Apex Court has reiterated that in absence of specific allegation and prima-facie case against co-accuseds, the order taking cognizance will be bad in law and that will be an abuse of process of Court.

8. The petitioners are parents-in-law of the Opposite Party No.2 who was having three children from the first husband. After, the death of first husband, she married with the son of these petitioners. The second husband is none else than the own Bhagina of her first husband. The allegation of torture is omnibus against these petitioners. The Opposite Party No.2 is presently residing at the place of her first husband. The allegation against these petitioners that they visited at the paternal place of Opposite Party No.2 and also at the place of her first husband is vague and omnibus and so if their prosecution is allowed to continue, it would be an abuse of process of the Court.

9. In view of the above facts and circumstances, the order dated 12.07.2012 taking cognizance with respect to these petitioners and their criminal prosecution on the basis of said cognizance order is quashed and this criminal miscellaneous application is allowed.

(Sanjay Kumar, J)

B.Kr./-

AFR/NAFR	NAFR
CAV DATE	
Uploading Date	28.08.2017
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