

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.30912 of 2013

Arising Out of PS.Case No. -1324 Year- 2012 Thana -GAYA COMPLAINT CASE District- GAYA

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1. Shishir Kumar, s/o Ashok Kumar
 2. Ashok Kumar, s/o late Ramawatar Gope
 3. Mina Kumari, w/o Ashok Kumar

All resident of Transport Nagar, Near Bihar, Hospital, P.S- Agamkuan, District- Patna.

.... Petitioners

Versus

1. The State of Bihar
2. Pragati Raj, w/o Sishir Kumar, d/o Mahendra Kumar, resident of Transport Nagar, Near Bihar Hospital, P.S- Agamkuan, District- Patna, present resident of mohalla- A.P. Colony, Chiraiyatand, P.S- Rampur, District- Gaya.

.... Opposite Party/s

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Appearance :

For the Petitioners	:	Mr. Aaruni Singh, Advocate.
For the Opposite Party No.2	:	Mr. Kumar Nikhil, Advocate.
For the State	:	Mr. Suresh Pd. Singh, A.P.P.

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CORAM: HONOURABLE MR. JUSTICE SANJAY PRIYA

CAV JUDGMENT

Date: 8-03-2017

1. This application under Section 482 Cr. P.C. has been filed for quashing of the order dated 11.1.2013 passed by the learned Chief Judicial Magistrate, Gaya, whereby the learned Magistrate after holding enquiry, has found prima facie case for the offence under Section 498A of the Indian Penal Code and Section 4 of Dowry Prohibition Act against all the accused persons as named in the complaint petition.

2. As per prosecution case filed by the opposite party No. 2 Pragati Raj, she was married with Shisir Kumar at Gaya. The



father of the complainant gave adequate gifts at the time of marriage. Shisir Kumar was working in Merchant Navy and Ashok Kumar retired from Air Force. The complainant went to her matrimonial home after marriage then her father-in-law Ashok Kumar came to her with bad intention and started touching her chest. When she raised alarm, Ashok Kumar fled away. She made complaint to her husband, but he did not take any action. Whereafter, the accused persons started making demand of a car from the parents of the complainant. She was mentally and physically tortured for non-fulfillment of aforesaid dowry demand. The husband often used to come in drunken state in the night and committed vulgar activities with her and used to commit forcible physical relationship with her and when she made protest, she was assaulted. She made complaint with her mother-in-law Mina Devi and she told the complainant to bring car or house from her father. The complainant got injured on account of '*Mar-Pit*'. The father-in-law used to take her in a room on a plea to treat her and used to touch her private parts. On 3.3.2012, Ashok Kumar sent his wife Mina Kumari and his son Shisir Kumar to market and gave one tablet to the complainant to eat as she was in fever and told that fever will come down. The complainant took the tablet and became intoxicated. Thereafter, the complainant felt that her father-in-law was removing all her clothes. She raised hulla and anyhow managed to save herself.



She was always assaulted by her husband and father-in-law in her sasural. The complainant became pregnant in March, 2012 and expressed her desire to go to her Naihar. Then on 30.3.2012, Ashok Kumar and Mina Kumari forcibly gave medicine to the complainant for abortion and when the abortion did not take place, Mina Kumari and Ashok Kumar both tried to do the abortion. The complainant felt pain and Ashok Kumar gave her medicines. The father of the complainant came and took her to Gaya on 6.7.2012. It is further alleged that accused persons gave threat to perform second marriage of Shisir Kumar.

3. The learned Magistrate after holding enquiry found *prima facie* case against all the accused persons (petitioners) named in the complaint for the offence punishable under Section 498A of the Indian Penal Code and Section 4 of Dowry Prohibition Act.

4. It has been submitted on behalf of the petitioners that the instant case is counter blast of Matrimonial Case No. 360 of 2012 filed by the husband Shisir Kumar against the opposite party No. 2 and others under Section 9 of the Hindu Marriage Act. The husband has also filed an Informatory Petition No. 1747 of 2012 in the court of learned Chief Judicial Magistrate, Gaya, informing about threat he was receiving on his Mobile phone. It has further been submitted that the husband Shisir Kumar has filed Matrimonial Case No. 156 of



2013 before the learned Principal Judge, Family Court, Patna, seeking divorce from opposite party No. 2 since she levelled serious allegation against him. The present complaint is nothing, but outcome of malice and vendetta at the instance of opposite party No. 2 and his family members. It is counter blast of Matrimonial Case No. 360 of 2012 filed by the husband of the complainant namely, Shisir Kumar under Section 9 of the Hindu Marriage Act.

5. On the other hand, it is submitted on behalf of the opposite party No. 2 that she was mentally and physically tortured by her husband and other family members. The husband has earlier filed an Informatory Petition and a Matrimonial Case under Section 9 of the Hindu Marriage Act merely to create a defence against torture committed by him and his family members with the complainant. The motive of the accused persons was clear, when they filed the divorce case against opposite party No. 2 vide Matrimonial Case No. 156 of 2013 on false and frivolous grounds. The husband and other accused persons were not willing to keep the complainant from very beginning of the marriage for non-fulfillment of demand of a Motor car and a house.

6. The learned A.P.P. has submitted that the court below after examining the Complainant on Solemn Affirmation and the statement of three other witnesses, during enquiry, found *prima*



facie case against the petitioners for the offence under Section 498A of the Indian Penal Code and Section 4 of Dowry Prohibition Act.

7. Having heard the parties and from perusal of the impugned order as also the allegation made in the complaint petition, this Court finds that the complainant has levelled specific allegation against the accused persons, which has also been supported by the complainant in her Solemn Affirmation and the other three witnesses examined during enquiry.

8. The Hon'ble Supreme Court in a case of *State of Haryana Vrs. Bhajan Lal* reported in *AIR 1992, S.C. 604* has given illustration setting parameters for interference under Section 482 Cr. P.C. The Hon'ble Supreme Court has held that the power can be exercised either to prevent abuse of process of the court or otherwise to secure the ends of justice. It is well settled by the Hon'ble Supreme Court in a judgment reported in *(1976) 3 Supreme Court Cases, 736 (Smt. Nagawwa Vrs. Veeranna Shivalingappa Konjalgi and others)* that at the time of issuing process, the Magistrate is mainly concerned with the allegations made in the complaint or the evidence led in support of the same and he is only to be *prima facie* satisfied whether there are sufficient grounds for proceeding against the accused. It is not the province of the Magistrate to enter into a detailed discussion of the merits or demerits of the case.



9. In the instant case, from the impugned order it appears that the learned Magistrate on the basis of allegation in the complaint as well as statement of witnesses and Solemn Affirmation of Complainant recorded during enquiry, came to the conclusion that there is sufficient materials on the record to make out a *prima facie* case under Section 498A of the Indian Penal Code and Section 4 of Dowry Prohibition Act against all the accused persons (petitioners) as named in the complaint petition.

10. Therefore, in the facts and circumstances of the case, this Court does not find any illegality in the impugned order dated 11.1.2013 passed by the learned Chief Judicial Magistrate, Gaya, in connection with Complaint Case No. 1324 of 2012, Trial No. 2036 of 2013.

11. This Cr. Misc. application is, accordingly, dismissed.

(Sanjay Priya, J)

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AFR/NAFR	NAFR
CAV DATE	30.01.2017
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