

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.5580 of 2012

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1. Md. Sarfuddin S/O Late Md. Juhi Mian Resident Of Mohalla Noorani Bagh Colony, 5-A, Police Station- Alamganj, District and Town, Patna
 2. Md. Noor Hassan S/O Md. Sarfuddin Resident Of Mohalla Noorani Bagh Colony, 5-A, Police Station- Alamganj, District and Town, Patna
 3. Md. Zahid S/O Md. Sarfuddin Resident Of Mohalla Noorani Bagh Colony, 5-A, Police Station- Alamganj, District and Town, Patna

.... Petitioners

Versus

1. The State Of Bihar
2. Nasim Khan S/O Late Sujayat Khan Resident of Village- Mauza, English P.S- Mairwa, District- Siwan

.... Opposite Parties

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Appearance :

For the Petitioners	:	Mr. Nawab Ahmad Mohnari, Advocate
For the Opposite Party No.2	:	Mr. Shailendra Kumar, Advocate
For the State	:	Mr. Arun Kumar Pandey, APP

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CORAM: HONOURABLE MR. JUSTICE SANJAY KUMAR

ORAL JUDGMENT

Date: 02-08-2017

This application under section 482 of the Cr.P.C. has been filed to quash the order dated 05.04.2011 passed by learned Judicial Magistrate, Ist Class, Siwan in Complaint Case No.2934 of 2010 whereunder the learned Judicial Magistrate finding prima-facie case for the offence under sections 452, 380 and 506 of the IPC and summoned the petitioners.

2. Heard and perused the record.

3. It has been submitted that the Opposite Party No.2 has Filed the Complaint Case No.2934 of 2010 as counter blast to the complaint case no.1126 of 2008 which was filed by the daughter of petitioner



no.1 and sister of petitioner nos.2 and 3 against the Opposite Party No.2 and his family members. The daughter of petitioner no.1 was married on 06.05.2008 with the full brother of Opposite Party No.2. After marriage her husband and in-laws including the present Opposite Party No.2 started torturing her in connection with further demand of dowry and she was ousted from the matrimonial house. The daughter of petitioner no.1 filed Complaint Case against her husband and his family members for the offence under Section 498A and other allied Sections of the IPC and Sections 3 and 4 of the Dowry Prohibition Act. In the said case, the Opposite Party No.2 and his wife were remanded to jail on 15.02.2010. They were allowed bail by Additional Sessions Judge-12, Patna on 06.04.2010 in BP No.1094 of 2010 on the basis of compromise. They were provisionally allowed bail till 16.06.2010. The daughter of the informant visited at the place of her husband where in-laws and husband again started torturing her. On the prayer of petitioner no.1, the interim order of bail was not extended and they were directed to surrender before the court below. The bail prayer of Opposite Party No.2 and his wife were rejected remanded to jail on 05.04.2011. Their bail prayer was allowed on 15.04.2011 in BP NO.1094 of 2010. It has been further submitted that petitioner no.2 on the alleged date of occurrence was at Bahrain and so his participation in the present crime does not arise. He was out of India from 7th October, 2010 to 25th July, 2011. The petitioners are resident of Patna City and it is not expected that they would go to Siwan to commit such crime. The daughter of petitioner no.1 has filed maintenance case which has been allowed ex-parte. The husband has not paid a single farthing. The full brother of son of petitioner no.1 has filed the present complaint case only to put pressure on the petitioners to get the cases settled. The allegation against the petitioners is omnibus. The prosecution of these petitioners in the said criminal case which has been filed out



of vengeance to teach lesion to these petitioners and so the impugned order is fit to be quashed.

4. The learned APP on the other hand opposed the submission.

5. The Opposite Party No.2 had already appeared in this case by filing a vakalatnama but at the time of hearing nobody on his behalf appeared to oppose the submissions.

6. From the documents on record, it appears that the petitioners are parents and brother-in-laws of full brother of Opposite Party No.2. The Opposite Party No.2 was sent to jail in a case lodged for the offence under Section 498A and other Sections of the IPC. The complaint case on behalf of the daughter of petitioner no.1 was filed in the year 2008 and after two years of said complaint case, the Opposite Party No.2 has filed the present case. The Opposite Party No.2 was remanded to jail twice in a case lodged by the daughter of petitioner no.1. The allegation of committing theft is omnibus. There are contradictions also in the statement of complainant on solemn affirmation and the statement given in the complaint petition. The prosecution and the petitioners in the above background appears to be an abuse of the process of the Court.

7. In the facts of the case, the order dated 05.04.2011 taking cognizance against the petitioners as well as criminal prosecution of these petitioners and thus is quashed. This criminal miscellaneous application is allowed.

(Sanjay Kumar, J)

B.Kr./-

AFR/NAFR	NAFR
CAV DATE	
Uploading Date	10.08.2017
Transmission Date	10.08.2017

