

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.32849 of 2016

Arising Out of PS.Case No. -3326 Year- 2011 Thana -KATIHAR COMPLAINT CASE District-
KATIHAR

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1. Md. Aazad Ali @ Azad Ali, Son of Md. Ishhaque

2. Bibi Saharbanu, Wife of Md. Ishhaque

Both are resident of village – Jainagar, P.S. Mansahi, District – Katihar.

.... Petitioner/s

Versus

1. The State of Bihar

2. Bibi Sonabhan, Wife of Md. Azad Ali, D/o Abdul Hakim, resident of
village – Bhagwakol, P.S. Barari, District – Katihar.

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Jitendra Kumar Pandey

For the Opposite Party/s : Mr. U.S.P. Singh, APP

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CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH

ORAL ORDER

02/ 17-05-2017

Heard learned counsel for the petitioners and

Mr. J.N. Thakur, learned counsel for the State.

The present application has been filed for quashing the order dated 02.05.2016 passed by learned Additional Sessions Judge-IV, Katihar in Criminal Revision No. 124 of 2012 affirming the order dated 10.09.2012 passed in Complaint Case No. 3326 of 2011 by learned Sub-divisional Judicial Magistrate, Katihar, whereby process has been directed to be issued after



cognizance being taken for the offences punishable under Section 498A of the Indian Penal Code and section 4 of Dowry Prohibition Act. Hence, the quashing of the both abovementioned orders has been prayed for.

It is submitted by learned counsel for the petitioners that petitioner no. 1 is the husband of the complainant whereas petitioner no. 2 is the mother of petitioner no. 1 and mother-in-law of the complainant.

The prosecution case as per the complaint petition of the complainant, Bibi Sonabhan is that the complainant was married with petitioner no. 1 on 25.05.2006 according to Muslim rights and customs. After the marriage for sometime the relationship was cordial and the complainant gave birth of two daughters namely, Anjuman Ara and Sanjida but after the birth of second daughter the behaviour of the accused persons got changed and they started inflicting torture. The parents' side of the complainant tried to pacify the issue but the accused persons assaulted the mediators and took the signature of the complainant and subsequently converted it into divorce paper. The complainant was examined on S.A. and two enquiry witnesses supported the accusation on the basis of which vide order dated 10.09.2012 the process was directed to be issued after cognizance being taken.



The said order was challenged by the petitioners in Criminal Revision No. 124 of 2012 but the same was dismissed by learned Additional Sessions Judge-IV, Katihar vide order dated 02.05.2016 passed in Criminal Revision No. 124 of 2012.

Learned counsel for the petitioners submits that petitioner no. 1 gave talaq to the complainant prior to the lodging of the case and the said fact has not been considered by the learned SDJM while directing for issuance of process.

It is well settled law that at the stage of exercising jurisdiction under Section 190(1)(a) Cr.P.C. the learned Magistrate has only to see the prima facie case. The learned SDJM has considered the S.A. of the complainant and the statement of the enquiry witnesses and then directed for issuance of process. A useful reference may have to the case of Sonu Gupta Vs. Deepak Gupta & Ors., 2015(2) PLJR (SC) 321. Paragraph no. 7 reads as:-

“Having considered the details of allegations made in the complaint petition, the statement of the complainant on solemn affirmation as well as materials on which the appellant placed reliance which were called for by the learned Magistrate, the learned Magistrate, in our considered opinion, committed no error in summoning the accused persons. At the stage of cognizance and summoning the Magistrate is required to apply his



judicial mind only with a view to take cognizance of the offence, or, in other words, to find out whether prima facie case has been made out for summoning the accused persons. At this stage, the learned Magistrate is not required to consider the defence version or materials or arguments nor he is required to evaluate the merits of the materials or evidence of the complainant, because the Magistrate must not undertake the exercise to find out at this stage whether the materials will lead to conviction or not.”

It is a trite view that at the stage of exercising jurisdiction under Section 190(1)(a) of the Code of Criminal Procedure the Magistrate is not suppose to hear the accused or consider the defence version. A useful reference may have to the case of State of Orissa Vs. Devendra Nath Padhi (2005) 1 Supreme Court Cases 568. Paragraph no. 23 reads as follows:

“23. As a result of aforesaid discussion, in our view, clearly the law is that at the time of framing charge or taking cognizance the accused has no right to produce any material. Satish Mehra's case holding that the trial court has powers to consider even materials which accused may produce at the stage of Section 227 of the Code has not been correctly decided.”



Hence, this application is disposed of with liberty to the petitioner to raise all the contentions at the appropriate stage of proceeding.

(Dinesh Kumar Singh, J)

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