

IN THE HIGH COURT OF JUDICATURE AT PATNA**Criminal Miscellaneous No.34361 of 2013**

Arising Out of PS.Case No. -604 Year- 2012 Thana -SAHARSA COMPLAINT CASE District-
SAHARSA

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1. Surendra Prasad @ Sukan Sah, son of Late Dahu Prasad Sah, at present residing in the house of Krishna Prasad, Upkar Nagar, Kadru, P.S, Kadru, District Ranchi(Jharkhand), Permanent Residents of Village Shripur, P.S. Hathauri, P.O. Shripur Via Bahari, District Samastipur.
 2. Keshav Deo, son of Surendra Prasad, at present residing in the house of Krishna Prasad, Upkar Nagar, Kadru, P.S, Kadru, District Ranchi(Jharkhand), Permanent Residents of Village Shripur, P.S. Hathauri, P.O. Shripur Via Bahari, District Samastipur.
 3. Sushila Devi, W/O Surendra Prasad, Permanent Residents of Village Shripur, P.S. Hathauri, P.O. Shripur Via Bahari, District Samastipur.

.... Petitioners

Versus

1. The State of Bihar.
2. Alka Mishra, W/O Prakash Kuamr and D/O Dr. Ramesh Mishra, resident of Bangaon(Thakur Patti), P.S. Angaon, District Saharsa. at present resident of Shri Dham Apartment A3, 3rd Floor, Tharudih, Polytechnic Road, Bekar Bandh, Dhanbad, P.O. + District Dhanbad, Jharkhand.

.... Opposite Parties

Appearance :

For the Petitioner/s : Mr. Satya Narayan Mishra, Advocate

For the Opposite Party No.2: Mr. Shailendera Kumar Singh, Advocate

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CORAM: HONOURABLE MR. JUSTICE VINOD KUMAR SINHA

CAV JUDGMENT

Date: 28-01-2017

Heard learned counsel for the petitioners.

This application under Section 482 of the Code of Criminal Procedure has been filed by the petitioners for quashing the order dated 19.1.2013 passed by the Sub-Divisional Judicial Magistrate, Saharsa in Complaint Case No. 604C/12 by which the learned SDJM has been pleased to order issuance of processes against the petitioners after finding a prima facie case against them under



Section 498A of the Indian Penal Code as well as under Section 4 of the Dowry Prohibition Act.

The prosecution case, as per the complaint petition, is that one Alka Mishra has filed a complaint before the Chief Judicial Magistrate, Saharsa stating, inter alia, therein that she was married with Prakash Kumar as per the Anand Margi customs and thereafter she came to her sasural and was living there. It is also stated that at the time of marriage her father has given 2 lakh rupees in cash and articles worth 3 lakh rupees. It is also her case that she became pregnant but after that the accused persons started torturing her both physically and mentally which she has informed to her father and brother who had taken her to Banaras and got her treated where she gave birth to a child. It is also her case that thereafter her father called a panchayati of Anand Marg but the accused persons did not consider their request and the husband of the complainant came and tried to get her signature on a plain paper. Further case of the complainant is that the accused persons came to her father's house and asked him to send her to which her father did not agree, due to which the accused No.1 (husband) became angry and demanded Rs.3 lakhs and other accused persons supported him and on her intervention, she was assaulted and abused.

On the basis of the aforesaid complaint, Complaint Case



No. 604C of 2012 was instituted against the petitioners and other accused persons.

The aforesaid case was transferred to learned SDJM for enquiry and trial, who after enquiry finding a prima facie case under Section 498A IPC and Section 4 of the Dowry Prohibition Act ordered for issuance of processes against the petitioners vide order dated 19.1.2013 passed in Complaint Case No. 604C of 2012 and the aforesaid order is under challenge in this application filed by the petitioners.

It has been submitted on behalf of the petitioners that no specific allegation has been attributed against any of the petitioners and what has been stated in the complaint petition is completely vague and omnibus and on the basis of such allegation proceeding cannot be allowed to continue as it will be an abuse of process of court. In this connection, learned counsel for the petitioners has cited some decisions of the Supreme Court, i.e., the case of Neelu Chopra vs. Bharti : (2009) 10 SCC 184, Geeta Mehrotra and another vs. State of Uttar Pradesh and another : (2012) 10 SCC 741 and Preeti Gupta and another vs. State of Jharkhand and another: (2010) 7 SCC 667 and has submitted that in the aforesaid decisions the Hon'ble Supreme Court has held that in absence of specific allegation and prima facie case against co-accused the order taking cognizance will be bad in law and



that will be an abuse of process of court. It has further been submitted that Supreme Court has also noticed that in the matters arising out of matrimonial cases it is a tendency to implicate all family members in the FIR, casually mentioning their names and claiming their active involvement, as such, taking cognizance against them would not be justified. On the basis of above discussions, it is argued that in the present case the complaint petition shows nothing specific against any of the petitioners and not an iota of evidence against each of the the petitioners, rather allegations leveled against them are completely vague and omnibus and, as such, in view of above decisions of the Supreme Court the order issuing processes against the accused persons, including the petitioners is bad in law and continuation of the present proceeding will only an abuse of the process of the court.

Heard learned APP as well as learned counsel for opposite party No.2.

It has been submitted on behalf of opposite party No.2 as well as learned APP that the learned court below after enquiry and on perusal of the materials collected during enquiry, has found a prima facie case under Section 498A IPC and Section 4 of the Dowry Prohibition Act and, hence, there is no illegality in the impugned order issuing processes against the petitioners.

Having heard learned counsel for the parties and on



perusal of the materials on record, including the complaint petition and the impugned order, it appears that petitioner No.1 is the father-in-law, petitioner No.2 is the brother-in-law and petitioner No.3 is the mother-in-law. No doubt, Hon'ble Apex Court in a large number of decisions has held that in criminal cases, specially the matrimonial cases there is tendency to implicate the whole family members in the case just to harass them and it has been held by the Apex Court that if FIR/complaint does not disclose any specific allegation against the accused, more so on co-accused, specially in the matter out of matrimonial cases, it would be clear abuse of the legal and judicial process to mechanically send the named accused in the FIR to undergo the trial unless ofcourse the FIR discloses specific allegations which would persuade the court to take cognizance of the offence alleged against the relatives of the main accused who are prima facie not found to have indulged in physical and mental torture of the complainant.

In view of the aforesaid decision cited by learned counsel for the petitioners, no doubt cautious approach has to be taken in matrimonial cases and if it is found that FIR did not disclose the commission of an offence the court would be justified in quashing the proceedings preventing the abuse of process of court. Simultaneously, the court has also to see in the matter of quashing, especially in cases



of matrimonial disputes whether the FIR in fact discloses commission of an offence by the relatives of the principal accused or the FIR prima facie discloses a case of overimplication by involving the entire family of the accused at the instance of the complainant.

Considering the allegations made in the complaint petition and the aforesaid background of the decisions of the Supreme Court cited, no doubt in the present case it appears that allegations are vague and omnibus against all the accused persons. Not only that complaint petition shows that the complainant living at Dhanbad with her husband and she became pregnant and then there is story of assault, it further appears that thereafter she was taken to Varanasi and after birth of her child, she is residing in her sasural. As such even from perusal of complaint petition there is no direct or specific allegation against him rather except vague and general allegation of torture and demand, nothing is there against the petitioners. As I have stated above, FIR clearly shows that during relevant time she was living at Dhanbad along with her and, as such, taking cognizance/issuance of processes petitioners without having specific allegation attributed against each of them or on the basis of only vague and omnibus allegation, specially when there is evidence that she was living with her husband, it will be an abuse of the process of the court.



In view of the discussions made above, the impugned order dated 19.1.2013 passed in Complaint Case No. 604C/12 so far as it concerns the petitioners is quashed to the extent by which the processes were issued against them.

Accordingly, this application is allowed.

(Vinod Kumar Sinha, J)

spal/-

AFR/NAFR	
CAV DATE	
Uploading Date	28.01.2017
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