

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No 22836 of 2011

Arising Out of PS.Case No. -0 Year- null Thana -null District- SIWAN

- =====
- 1 Dharmendra Dixit
 - 2 Birendra Dixit, sons of Dinanath Dixit
 - 3 Dinanath Dixit, son of late Rishi Dixit
 - 4 Sona Devi @ Sonmati Devi, wife of Dinanath Dixit
 - 5 Girja Devi, wife of Birendra Dixit
 - 6 Indu Devi, wife of Ramesh Mishra, daughter of Dinanath Dixit
 - 7 Reema Devi @ Reema Dubey, daughter of Dinanath Dixit
 - 8 Premchand Dubey, son of Janak Dubey, residents of Village – Chamaripatti, PS – Phulwaria, District – Gopalganj
 - 9 Ramesh Mishra, son of late Rambachan Mishra
 - 10 Baby Kumari
 - 11 Rinki Kumari, daughters of Ramesh Mishra, residents of Village – Isuapur, PS – Sasamusa, District - Gopalganj

.... Petitioner/s

Versus

- 1 The State of Bihar
- 2 Pushpa Devi, c/o Dinanath Tiwary, resident of Village – Bitakhal, PS – Guthani, District - Siwan

.... Opposite Party/s

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Appearance :

For the Petitioner/s	:	Mr Ajay Kumar, Advocate
For the S t a t e	:	Mr Nirmal Kr Sinha, APP
For the Intervener	:	Mr Ajay Kumar Thakur, Mr Ravi Ranjan, Advocates

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CORAM: HONOURABLE MR JUSTICE DINESH KUMAR SINGH

ORAL JUDGMENT

Date: 04-04-2017

Heard learned counsel for the petitioner, Mr Ajay Kumar Thakur, the intervener, being father of the complainant and Mr Nirmal Kumar Sinha for the State.

2 The present application has been filed for quashing the order dated 22.09.2008, passed by learned Chief Judicial Magistrate, Siwan, in Complaint Case No 1180 of 2008, whereby, process has



been issued against the petitioners after finding a prima facie case for offences under Sections 498A, 494, 406 of Indian Penal Code and Section 4 of Dowry Prohibition Act.

3 IA No 811 of 2012 has been filed on behalf of the father of Opposite Party No 2, the complainant, wherein, a prayer has been made on his behalf for allowing him to oppose the application of the petitioners in the capacity of an intervener. The intervener, father of Opposite Party No 2, contends that Opposite Party No 2 has been missing after 17.03.2010, i e, the date when Opposite Party No 2 was taken by petitioner No 1 along with him. The intervener, father of Opposite Party No 2, has brought on record the order sheet in Complaint Case No 1180 of 2008 (Trial No 2266 of 2012), from 02.06.2008 to 06.02.2012. On perusal of the said order sheet, which is Annexure I/2 to IA No 811 of 2012, it is reflected that Opposite Party No 2 was taken by petitioner No 1 along with him. Thereafter, the matter was fixed on 04.06.2010 for pre-charge evidence. But since then, Opposite Party No 2 never appeared on any date and she was only represented before the Court below. On 01.06.2011, the application under Section 317 of Cr P C, preferred by the accused was rejected and they were directed to appear on 15.07.2011 for pre-charge evidence. On 06.01.2012, an affidavit was filed by petitioner No 1, before the learned Court below where it was stated that the



complainant is alive and is residing along with her brother. The intervener, father of Opposite Party No 2, contends that the present application for quashing of the order issuing summons has been filed on behalf of the petitioners on 28.06.2011. It is contended by him that the matter is being repeatedly adjourned before the learned trial Court since 2010 at the pre-charge evidence stage, at the instance of the petitioners and till date, the whereabouts of the complainant/Opposite Party No 2 is not known and she has been missing. During the course of hearing of the present application under consideration, a co-ordinate Bench of this Court had issued notice to Opposite Party No 2, vide order dated 16.01.2012, and at the same time, further proceedings of Complaint Case No 1180 of 2008 was stayed. Under such circumstances, the trial has remained stayed, while the whereabouts of the complainant is still not known.

4 Considering the aforesaid submissions made by the Intervener, IA No 811 of 2012 is allowed and the father of Opposite Party No 2 is permitted to be impleaded as Opposite Party No 3 in the present criminal miscellaneous application, since in the absence of Opposite Party No 2, the Intervener, i e, her father can be considered to be a victim, within the meaning of victim, as defined under Section 2 (wa) of Cr P C.

5 In the complaint petition, the basic accusation is of



torture for non-fulfillment of dowry and performance of second marriage by petitioner No 1, Dharmendra Dixit, the husband of the complainant. Petitioner Nos 2 to 11 are the parents, brothers, brother's wife, sisters, brother-in-law and sister's daughters (bhagini) of petitioner No 1.

6 Learned counsel for the petitioners submits that the thrust of accusation is against the husband of the complainant, Dharmendra Dixit, hence, he is not pressing the application with regard to petitioner No 1, Dharmendra Dixit.

7 This application, so far as it relates to petitioner No 1, Dharmendra Dixit, is dismissed as not pressed.

8 It is submitted by learned counsel for the petitioners that the accusation is not specific against other accused, particularly, there is no accusation against O.P. Nos. 10 and 11. However, the learned counsel for the petitioners is not raising the issue of the lack of territorial jurisdiction of the learned Court below, but submits that maliciously the entire family members have been dragged in the case.

9 Considering the rival submission of the parties, this is not in dispute that the complainant Pushpa Devi was married with petitioner no. 1, Dharmendra Dixit, on 14.06.2003. It has been alleged in the complaint petition that soon after one month of the marriage, torture was inflicted upon the complainant for non-fulfillment of



dowry demand of five lacs rupees and one katha of land. Allegation is also that the husband of the complainant had illicit relationship with Niru Devi alias Maushami and the complainant was attempted to be poisoned and set on fire by pouring kerosene oil by co-accused Birendra Dixit, Girija Devi, Indu Devi and Premchand Dubey on 15.5.2008. It is further alleged that the complainant was repeatedly abused and assaulted by her in-laws.

10 The learned court below, after examining the complainant on Solemn Affirmation and examination of four enquiry witnesses, issued process after finding a prima facie case for offences under Sections 498A, 494 & 406 of IPC and under Section 4 of the Dowry Prohibition Act, vide order dated 22.09.2008.

11 This is a trite law that at the level of passing order under section 190(1)(a) Cr.P.C., the Court has only to see whether prima facie case is made out or not, as has been held by the Apex Court in the case of Sonu Gupta Vs. Deepak Gupta & Ors. reported in 2015(2) PLJR SC 321. Paragraph 7 reads as follows:

“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.”

12 The Court has not to conduct a roving enquiry or meticulous examination of facts at the stage of exercising its jurisdiction under Section 204 of Cr P C. After examination of the complainant under Section 200 of Cr P C and conducting an enquiry under Section 202 of Cr P C, the Court has the option either to dismiss the complaint under Section 203 of Cr P C, if he is of the opinion that there is no sufficient ground for proceeding. But in case, the Magistrate taking cognizance is of the opinion that there is sufficient ground for proceeding, he is vested with the power to issue summons to the accused for their attendance. Hence, the Magistrate has only to see whether there is sufficient ground or not.

13 The cases with accusation under section 498A IPC are filed in the heat of moment over trivial issues without proper deliberations and the entire family of the husband is being implicated



without visualizing the implications and consequences of the case being filed as has been held by the Apex Court in the case of Preeti Gupta and Anr. Vs. State of Jharkhand and Anr. (2010) 7 Supreme Court Cases 667. Paragraph nos. 32 to 36 read as follows:

“It is a matter of common experience that most of these complaints under section 498-A IPC are filed in the heat of the moment over trivial issues without proper deliberations. We come across a large number of such complaints which are not even bona fide and are filed with oblique motive . At the same time, rapid increase in the number of genuine cases of dowry harassment are also a matter of serious concern.

The learned members of the Bar have enormous social responsibility and obligation to ensure that the social fiber of family life is not ruined or demolished. They must ensure that exaggerated versions of small incidents should not be reflected in the criminal complaints. Majority of the complaints are filed either on their advice or with their concurrence. The learned members of the Bar who belong to a noble profession must maintain its noble traditions and should treat every complaint under section 498-A as a basic human problem and must make serious endeavour to help the parties in arriving at an amicable resolution of that human problem. They must discharge their duties to the best of their abilities to ensure that social fiber, peace and tranquility of the society remains intact. The members of the Bar should also ensure that one complaint should not lead to multiple cases.

Unfortunately, at the time of filing of the



complaint the implications and consequences are not properly visualized by the complainant that such complaint can lead to insurmountable harassment, agony and pain to the complainant, accused and his close relations.

The ultimate object of justice is to find out the truth and punish the guilty and protect the innocent. To find out the truth is a Herculean task in majority of these complaints. The tendency of implicating husband and all his immediate relations is also not uncommon. At times, even after the conclusion of criminal trial, it is difficult to ascertain the real truth. The courts have to be extremely careful and cautious in dealing with these complaints and must take pragmatic realities into consideration while dealing with matrimonial cases. The allegations of harassment of husband's close relations who had been living in different cities and never visited or rarely visited the place where the complainant resided would have an entirely different complexion. The allegations of the complaint are required to be scrutinized with great care and circumspection.

Experience reveals that long and protracted criminal trials lead to rancour, acrimony and bitterness in the relationship amongst the parties. It is also a matter of common knowledge that in cases filed by the complainant if the husband or the husband's relations had to remain in jail even for a few days, it would ruin the chances of amicable settlement altogether. The process of suffering is extremely long and painful.'

Hence, such trivial prosecution should be quashed but at the



same time, the Apex Court has held that the power of quashing should be exercised with caution and care and the cases where the accusation prima facie constitutes the offence, should not be quashed. Reference may be had to the case of Geeta Mehrotra & Anr. State of U.P. & Anr. 2013(1) PLJR (SC) 10. Paragraph 24 of the judgment reads as follows:

“However, we deem it appropriate to add by way of caution that we may not be misunderstood so as to infer that even if there are allegation of overt act indicating the complicity of the members of the family named in the FIR in a given case, cognizance would be unjustified but what we wish to emphasize by highlighting is that, if the FIR as it stands does not disclose specific allegation against accused more so against the co-accused specially in a matter arising out Of matrimonial bickering, 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 of course 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-wife. It is the well settled principle laid down in cases too numerous to mention, that if the FIR did not disclose the commission of an offence the court would be justified in quashing the proceedings



preventing the abuse of the process of law. Simultaneously, the courts are expected to adopt a cautious approach in matters of quashing specially in cases of matrimonial dispute 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 over-implication by involving the entire family of the accused at the instance of the complainant, who is out to settle her scores arising out of the teething problem or skirmish of domestic bickering while settling down in her new matrimonial surrounding.”

14 In the present case, even the learned counsel for Opposite Party No 3, i e, the intervener, the father of the complainant, admits that petitioner nos. 10 and 11, namely, Baby Kumari and Rinki Kumari, the minor daughters of the sister of the husband of the complainant and there is no specific accusation against them. Hence, learned counsel for the intervener is not opposing the prayer for quashing of their prosecution.

15 Accordingly, the prosecution with regard to petitioner nos. 10 and 11 above named, is hereby, quashed.

16 So far as the other petitioners are concerned, this Court is dismayed to find that the quashing application was filed in 2011, suppressing this fact that the case is being adjourned before the trial Court since 2010 for production of witness at pre-charge level. It



has also been suppressed that the complainant went with her husband on 17.03.2010 and since then she is traceless, hence, they do not deserve any sympathy as it amounts to playing fraud upon the Court and the maxim of *suppresio veri, expression falsi* (suppression of the truth is equivalent to the expression of falsehood) gets attracted as has been held in the case of Motilal Songara Vs. Prem Prakash alias Pappu & Anr, since reported in (2013) 9 Supreme Court Cases 199.

17 In the present case, a clear case of suppression of the material facts is being made out against the petitioners. Such suppression is apparently deliberate and intentional since, although the application for quashing has been filed on 28.06.2011, but prior to that Opposite Party No 2 was already taken by petitioner No 1, along with him and Opposite Party No 2 has been missing since then. But this Court did not find even a single averment to this effect in the entire application of the petitioners. The order sheet, as is contained in Annexure-I/2, does not contain any application by the petitioners until 06.01.2012, to the effect that Opposite Party No 2 is not residing with the petitioners. The fraudulent intention is writ large, which this Court cannot ignore, particularly when Opposite Party No 2 has not appeared before this Court after notices were issued to her.

18 Hence, on the ground of suppression before this Court, of the fact that the matter was pending since 2010 for evidence



at pre-charge level under section 244 Cr.P.C. and disappearance of the complainant since then and on the ground that the order of cognizance dated 22.09.2008 has been challenged after a significant delay in 2011, this Court is not inclined to interfere.

19 Accordingly, this application, so far as it relates to petitioner nos. 2 to 9 above named is concerned, is dismissed.

(Dinesh Kumar Singh, J)

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