

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.28194 of 2013

Arising Out of PS.Case No. -1833 Year- 2012 Thana -DARBHANGA COMPLAINT CASE
District- DARBHANGA

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1. Pappu @ Saidul Rahman @ M D. Saidur Rahman S/O Mohibul Khan Resident
Of Village Sarjapur, P.S. Kevati, District Darbhanga.

.... Petitioner/s

Versus

1. The State Of Bihar.
2. Shamima Khatoon D/O Md. Islam Khan Resident Of Village Manihas, P.S.
Simri, District Darbhanga.

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Md. Sufiyan
Mr. Thakur Brajesh Singh
For the Opposite Party/s : Dr. Ravindra Kumar, APP

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CORAM: HONOURABLE MR. JUSTICE SANJAY KUMAR

ORAL JUDGMENT

Date: 12-09-2017

This application under Section 482 of the Code of Criminal Procedure has been filed to quash the order dated 14.02.2013 passed by the learned Sub Divisional Judicial Magistrate, Darbhanga in Complaint Case No. 1833 of 2012 (Trial No. 3412 of 2013) whereby and whereunder the learned Magistrate finding prima facie case for the offence under Sections 498-A of the Indian Penal Code and Section 3/4 of the Dowry Prohibition Act summoned the petitioner and other co-accused.

2. Heard both sides and perused the record.
3. The petitioner is full brother of the husband of the Opposite Party No. 2 (complainant). It has been submitted that this



petitioner has no concern with the affairs of the complainant or her husband. He is residing separately quite unconcerned with them. The petitioner mostly remains outside in connection with his livelihood. The date of occurrence has been alleged to be 22.03.2012 on which date, he was in Saudi Arabia. Learned counsel in support of his contention has referred Annexure-8 to the petition, which is photocopy of the Passport bearing No. G 5256686. This document shows that he left India on 25.02.2012 and much after his departure from India, the alleged occurrence took place i.e. on 22.03.2012. It has been further submitted that the complainant is in the habit of lodging case with false and frivolous allegation and prior to this case, she had filed two more cases against her husband and his family members vide Complaint Case No. 343 of 2011, Simri P.S. Case No. 43 of 2011 on 02.03.2011 and Simri P.S. Case No. 81 of 2012. The said Simri P.S. Case No. 81 of 2012 was investigated by police and submitted final form as case untrue. Thereafter, the Opposite Party No. 2 filed protest petition wherein the cognizance has been taken. The allegation made in the protest petition appears improbable in view of the fact that it is not supposed that this petitioner along with his brother will go at the matrimonial place of the complainant and commit such crime in the dead of night.

4. In this regard, I would like to refer the cases of Neelu



Chopra Vs. Bharti (2009)10, SCC 184. Geeta Mehrotra and others Vs. State of UP & others (2012)10 SCC page 741, 2013(2) PCCR 210 (S.C.) and Preeti Gupta & others Vs. State of Jharkhand & others (2010) 7, SCC page 667 wherein the Hon'ble Apex Court has reiterated that in absence of specific allegation and prima facie case against co-accuseds, the order taking cognizance will be bad in law and that will be an abuse of process of court.

5. In view of the discussions made above, the criminal prosecution of this petitioner appears to be an abuse of process of Court. The order dated 14.02.2013 passed by the learned Sub Divisional Judicial Magistrate, Darbhanga in Complaint Case No. 1833 of 2012 (Trial No. 3412 of 2013) so far this petitioner is concerned, is quashed.

6. This application is allowed.

(Sanjay Kumar, J)

ajay gupta/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	14.09.2017
Transmission Date	14.09.2017

