

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.25832 of 2014

Arising Out of PS.Case No. -148 Year- 2012 Thana -DHAKA District- EAST CHAMPARAN
(MOTIHARI)

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1. Anandi Jha @ Anandi Chaudhary wife of Arvind Kumar Choudhary resident of
Parsapatayli District - Mahatairai, Nepal
2. Lalita Devi wife of Achutanand Jha resident of village - Bhandar, P.S. Dhaka,
District - East Champaran

.... Petitioner/s

Versus

1. The State of Bihar
2. Archana Devi daughter of late Chedi Thakur and wife of Jitendra Kumar Jha
resident of village - Vishnupur, P.S. Kataha, District - Muzaffarpur

.... Opposite Party/s

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Appearance:

For the Petitioner/s	:	Mr. Mrigank Mauli Mr. Sanket and Mr. Prince Kumar Mishra, Advocates.
For the State	:	Mr. Rajendra Singh Shastri, A.P.P.
For the O.P. No. 2	:	Mr. Baidyanath Thakur, Advocate.

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD

ORAL JUDGMENT

Date: 11-10-2017

A show cause has been filed on behalf of the
Superintendent of Police, Motihari.

2. Perused the show cause. For the reasons stated therein,
the show cause is accepted.

3. Heard learned counsel for the petitioners and learned
counsel for Opposite Party no. 2 as well as learned A.P.P. for the
State.

4. The petitioner no. 1 is the Nanad (husband's sister) and
the petitioner no. 2 is the mother-in-law of the informant-opposite



party no. 2. Both the petitioners are seeking quashing of the order dated 04.09.2013 passed by the learned Sub Divisional Judicial Magistrate, Motihari in Dhaka P.S. Case No. 148 of 2012 by which the learned Sub Divisional Judicial Magistrate, Motihari has taken cognizance of the offences under Sections 498A, 323 and 504 read with Section 34 of the Indian Penal Code and issued summons to the accused including the present petitioners.

5. Learned counsel for the petitioners at the very first instance submits that this is a case of malicious prosecution involving each and every member of the family of the husband of the informant. He would submit that in the F.I.R., apart from the husband, the father-in-law, the mother-in-law, the elder brother, the wife of the elder brother and the married sister (petitioner no. 1), all have been implicated on the strength of general and omnibus allegations of demand of dowry leading to act of cruelty. Learned counsel submits that in fact the father-in-law of the opposite party no. 2 has already died during pendency of his application for quashing of the order taking cognizance but a co-ordinate bench of this Court while considering the quashing application vide Cr. Misc. No. 52624/2013, filed on behalf of the elder brother and the wife of the elder brother of the husband, came to a conclusion that it was a case of malicious prosecution and, accordingly, quashed the impugned order dated



04.09.2013 as against the petitioners in the said case.

6. Learned counsel has referred the First Information Report (Annexure-1) wherein it is alleged that the informant was married to accused Jitendra Kumar (brother of petitioner no. 1 and son of petitioner no. 2) according to Maithili customs following the Hindu's ceremonies on 04.03.2009. It has been alleged that at the time of marriage, the parents of the informant had, according to their capacity, spent a sum of rupees ten lakhs on furniture, ornaments, clothes, etc. The allegation was that the elder brother of the husband created a number of obstacles in marriage and was demanding one Alto Car but, later on, with the intervention of the Naihar people of the informant they agreed to do the Vidai ceremony. It is specifically alleged thereafter that the accused Jitendra Kumar asked for 15 Bhar Gold, one Alto Car, one lakh rupees in cash saying that this is the common decision of the family. She has alleged act of cruelty against her husband. It is further alleged that when accused no. 1, 2 and 5 came for purpose of Vidai, there also they demanded Gold, Alto Car and ornaments.

7. Learned counsel has further drawn the attention of this Court towards the general and omnibus allegations bringing within the ambit of the allegations vaguely all other family members including the present petitioners. Learned counsel submits that in fact there is



not a single word specifically indicating any overt act committed by these two petitioners. It is his further submission that even in course of investigation police could not collect any independent material to substantiate the allegations against these petitioners.

8. By filing a Supplementary Affidavit learned counsel has brought on record a marriage certificate of the petitioner no. 1 showing that she was married to a Nepali citizen on 09.06.2003 and thereafter she has adopted / got Nepali citizenship. The marriage certificate has been issued by Local Development Ministry, Registration Branch, Government of Nepal. It is her case that after her marriage she has been residing in Nepal from 2003 onwards but has been unnecessarily dragged in this case by the opposite party no. 2 on account of her own dispute with her husband. Learned counsel further submits that the petitioner no. 2 is an old-aged lady, who has been implicated in the present case only because she happens to be the mother-in-law. In the first part of the allegations where the opposite party no. 2 has alleged demand of dowry, she has made that allegation only against her husband, the elder brother of the husband and the father-in-law. The allegation against the elder brother of the husband has already been disbelieved and the co-ordinate bench of this Court quashed the case against him.

9. Earlier this Court had called for the case diary which



has also been received and has been handed over to the learned A.P.P. for the State. Learned A.P.P. for the State having gone through the case diary submits that some general and omnibus allegations are there in the case diary also. No independent witness or any other material has come on the record to show any active involvement of these petitioners in the alleged offence.

10. This Court has considered the submissions made at the Bar. The Court has also perused the judgment of the co-ordinate bench of this Court in case of **Dharmendra Kumar Jha & Ors.** (elder brother and his wife) **Vs. The State of Bihar & Anr.**, reported in **2017 (1) PLJR 926**. The case against the elder brother and his wife was quashed as it was found from the unimpeachable documents brought before the Court that those allegations were false. The co-ordinate bench has also relied upon two decisions of the Hon'ble Supreme Court reported in **(2008) 13 SCC 678** and **(2012) 10 SCC 741**. The relevant paragraphs are quoted hereunder:

“14. The learned counsel for the petitioners has cited order of the Hon'ble Supreme Court reported in Para Para 22 of (2008) 3 SCC 678 as follows:

“Ordinarily, a defence of an accused although appears to be plausible should not be taken into consideration for exercise of jurisdiction under Section 482. The High Court at that stage would not ordinarily enter into a



disputed question of fact. It, however, does not mean that documents of unimpeachable character should not be taken into consideration at any cost for the purpose of finding out as to whether continuance of the criminal proceedings would amount to an abuse of the process of court or that the complaint petition is filed for causing mere harassment to the accused. Although a large number of disputes should ordinarily be determined only by the civil courts, but criminal cases are filed only for achieving the ultimate goal, namely, to force the accused to pay the amount due to the complainant immediately. The courts on the one hand should not encourage such a practice; but, on the other, can not also travel beyond its jurisdiction to interfere with the proceeding which is otherwise genuine. The courts cannot also lose sight of the fact that in certain matters, both civil proceedings and criminal proceedings would be maintainable.”

“16. The Hon’ble Supreme Court in a decision reported in Paras 14,15, 18 to 20 and 24 to 28 of (2012) 10 SCC 741 has come to a conclusion that:

“Though the contents of the complaint made out a prima facie case against the husband of Respondent 2 wife and some other family members, but no such case was made out against the appellant-accused. There were no specific allegations against the appellant-accused (sister and brother of the husband) so as to make them liable for bickering between Respondent 2



wife and her husband. There was no specific allegation against the appellant-accused that they demanded any dowry from Respondent 2. Casual reference to a large number of members of the husband's family without any allegation of active involvement would not justify taking cognizance against them and subjecting them to trial. Respondent 2 wife had obtained an ex parte divorce decree against her husband. This was also a relevant fact. Under these conditions, the High Court erred in not considering the entire circumstances of the case with regard to the appellant-accused. It disposed of the matter only on the issue of territorial jurisdiction without even looking at the other issues raised. Though it was justified in not deciding the issue of territorial jurisdiction under Section 482 Cr.P.C. but it failed to apply its mind to the case and determine whether the appellant-accused be subjected to trial. The High Court ought to have considered that even if the trial court had the jurisdiction to hold the trial, the question still remained as to whether the trial against the appellant brother and sister of the husband was fit to be continued and whether that would amount to abuse of process of court. As the contents of the FIR indicated that the appellant-accused were casually referred to and no prima facie case was made out against them, in the absence of specific allegations, criminal proceedings against them are quashed without remanding the matter to High Court for reconsideration."



11. In view of the unimpeachable materials on the record showing that the petitioner no. 1 is a married citizen of Nepal and is living there since the year 2003 after her marriage with her husband Arvind Kumar Chaudhary and that in the F.I.R. also there is no specific allegation of commission of any overt act against her as also that there is no specific allegation of over act against the mother-in-law and the demand of dowry is not attributed to her, this Court comes to a definite conclusion that this a case of false implication of each and every member of the family of the husband and, that is how, these two petitioners came to be implicated in the present case. The Court is of the view that further continuance of the prosecution against these two petitioners would only be an abuse of the process of Court.

12. In above view of the matter the order taking cognizance and issuance of summons insofar as it relates to the present petitioners is hereby quashed.

13. The application is allowed to the extent indicated above.

(Rajeev Ranjan Prasad, J)

Dilip/-

AFR/NAFR	NAFR
CAV DATE	N/A
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