

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.36447 of 2014

Arising Out of PS.Case No. -662 Year- 2012 Thana -ROHTAS COMPLAINT CASE District- SASARAM (ROHTAS)

- =====
1. Shiv Shankar Dubey s/o Ramanuj Dubey
 2. Ramanuj Dubey s/o Jagdeo Dubey
 3. Satyendra Dubey, son of Shiv Shankar Dubey All R/o Village-Sikrona, P.S.- Itarhi, District- Buxar

.... Petitioners

Versus

1. The State of Bihar
2. Shyam Narayan Tiwary, S/o Bhuneshwar Tiwari, R/o Village-Sawandihri, Post Balthari, P.S.- Kochas, District- Rohtas (Sasaram)

.... Opposite Party

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Appearance :

For the Petitioner/s : Mr. Dharmendra Kumar, Advocate

For the Opposite Party/s : Mr. Amitesh Kumar, Additional Public Prosecutor

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD

ORAL JUDGMENT

Date: 13-09-2017

Heard Sri Yogesh Chandra Verma, learned Senior counsel as well as learned counsel representing the petitioners, learned counsel representing the complainant/Opposite Party No. 2 and learned Additional Public Prosecutor for the State.

2. The petitioners, in the present case, are seeking quashing of the order taking cognizance dated 15.04.2013 passed in Complaint Case No. 662/2012 by learned Sub-Divisional Judicial Magistrate, Sasaram (Rohtas) by which learned Magistrate has taken cognizance of the offence



under Section 406 IPC read with Section 4 of the Dowry Prohibition Act, 1961.

3. Learned Senior counsel representing the petitioners would submit that from perusal of the complaint petition, which is annexure-1 to the present application, it would appear that due to failure of negotiation for marriage between the daughter of the complainant and the accused no. 1 namely, Satyendra Dubey, the present complaint has been brought with false and flimsy allegations.

4. Learned Senior counsel submit that in the complaint petition, although there are allegations that the complainant had handed over a sum of Rs. 3,00,000/- in cash to accused no. 3 and one gold chain worth Rs. 40,000/- for accused no. 1, Satyendra Dubey and a sum of Rs. 8 lacs in cash and one Alto Car was demanded by accused persons after 'Cheka' as a condition for marriage, but according to learned Senior counsel, the allegations are vague and there is not even a *prima facie* evidence to support the prosecution. According to him, no offence under Section 406 IPC and/or Section 4 of the Dowry Prohibition Act, 1961 is made out from a reading of the complaint petition, therefore, the order taking



cognizance is bad in law.

5. Reliance has been placed in support of the submissions by learned Senior counsel for the petitioners on the judgments in the case of ***Vijay Sharma & Anr. Vs. State of Bihar*** reported in ***2011 (1) PLJR 780***; ***Mishri Ram Vs. State of Bihar*** reported in ***2002 (4) PLJR 197*** and ***Employees' State Insurance Corporation Vs. S.K. Aggarwal*** reported in ***1998 CRL. L. J. 4027***. Further submission is that even if allegations are taken to be true for the arguments sake, Dowry Prohibition Act itself says that an agreement for giving and taking of dowry shall be void, therefore, the complainant cannot prosecute the accused persons for taking dowry, and as such, the cognizance under Section 4 of the Dowry Prohibition Act is bad in law.

6. On the other hand learned counsel representing the complainant/Opposite Party No. 2 submits that the learned Magistrate has taken cognizance of the offences as alleged on the basis of the statements of the complainant on oath as well as the statements of the inquiry witnesses under Section 202 Cr.P.C.

7. A counter affidavit has been filed on behalf of



complainant/Opposite Party No. 2 with which certain photographs have been attached to show that the negotiations had already taken place between the parties and it is only after some kind of ring ceremony (Cheka), which is evident from the photographs, the money and Alto Car was demanded, the accused persons broke the negotiation and refused to return the cash Rs. 300,000/- and gold chain which were handed over to accused no. 3 Ramanuj Dubey as per negotiation for marriage and thereby committed an offence under Section 406 of the Indian Penal Code read with section 4 of Dowry Prohibition Act. Further submission of learned counsel for the complainant/Opposite Party No. 2 is that no doubt Section 5 of the Dowry Prohibition Act says that any agreement for giving or taking dowry shall be void, but the scheme of Dowry Prohibition Act is different from other statute, that provision cannot be construed to mean and understand that the accused persons who have demanded dowry, if proved, shall not be punished, therefore, the submission of learned Senior counsel for the petitioners that by virtue of agreement being a void agreement no offence is made out is a total



misunderstanding of law on this behalf.

8. Learned counsel representing the complainant /Opposite Party No. 2 submits that the photographs, which he has attached with the counter affidavit filed before this Court, are very much part of the record before the learned Judicial Magistrate who has taken cognizance only after appreciation of the materials available on the record and based on a *prima facie* view for the purpose of cognizance. The photographs have not been enclosed with the complaint petition filed by the present petitioner as Annexure-1 to the present application, further the accused-petitioners have not brought on record the deposition of enquiry witnesses, and, therefore, all such documents which were against the petitioners have not been placed before this Court. He further submits depositions of enquiry witnesses have been brought on record by him with his counter affidavit, a perusal thereof would show that the witnesses have supported the case of the complainant. Thus, according to him, this Court need not exercise it's inherent jurisdiction to quash the present proceeding.

9. This Court has considered the rival submission at



the Bar. The judgments referred on behalf of the petitioners have also been perused. In the case of ***Employees' State Insurance Corporation Vs. S.K. Aggarwal*** since reported in ***1998 CRL. L. J. 4027***; the issue, which had fallen for consideration before the Hon'ble Supreme Court, was as to whether a criminal proceeding can be lodged against the Director of a limited company taking him as a principal employer liable to pay contribution under Section 40 of the Employee's State Insurance Act, 1948. The Hon'ble Supreme Court upheld the judgment of the Hon'ble Calcutta High Court taking a view that the Director shall not be personally liable for the contributions not deposited by the Company.

10. In the case of ***Mishri Ram Vs. State of Bihar*** since reported in ***2002 (4) PLJR 197***, a coordinate Bench of this Court was considering a criminal revision application which arose out of an order of conviction passed under Section 409 of the Indian Penal Code, whereby a sentence of two years simple imprisonment and to pay a fine of Rs. 1000/- in default was awarded to the accused. The argument of the petitioner in the said case was that there was no evidence about entrustment of the property and misappropriation



thereof, and therefore, the case of the petitioner would not fall within the mischief of Section 409 of the Indian Penal Code.

11. The Court, in Mishri Ram's case, came to a conclusion in the facts of that case that though there were evidence about entrustment of property to the petitioner but there was no evidence to show that he had dishonestly misappropriated the property and converted to the property to his own use, therefore, mere refusal to return the property which was entrusted to him was held not to constitute an offence under Section 406 of the Indian Penal Code.

12. In the case of ***Vijay Sharma & Anr. Vs. State of Bihar*** since reported in ***2011 (1) PLJR 780***; this Court quashed a criminal proceeding under Section 406 of the Indian Penal Code taking note of the facts that it was admitted case of the complainant/Opposite Party No. 2, that he had given money to the petitioner no. 1 for obtaining an employment for his son. On the assurance of the accused that he will obtain a job for his son in police force, the complainant/Opposite Party No. 2 had given a sum of Rs. 65,000/- to the accused. In the



facts of that case, a coordinate Bench of this Court noticed Section 23 of the Indian Contract Act, which declares void a contract, which is contrary to the law or opposed to the public policy, but the submission of the complainant relying upon Section 65 of the Indian Contract Act that he may still file a money claim was left open. In ultimate analysis, the criminal proceeding in the said case was quashed by learned Single Judge of this Court concluding that the allegations were false, frivolous and vexatious as a *vendata* and to divert the attention of the petitioners to prevent them from actively pursuing the criminal case which was brought by the petitioner against the complainant of the case under Section 304(B) IPC. The quashment of criminal proceeding is not on the ground as is being pleaded in the present case.

13. On consideration of the submissions of the parties as regards cognizance under Section 4 of the Dowry Prohibition Act, 1961, this Court is of the opinion that a case brought by the present complainant/Opposite Party No. 2 alleging that accused persons demanded dowry after receiving part of the agreed amount and the gold chain cannot be allowed to be closed down or quashed on the



ground that the agreement for giving and taking of dowry is a void agreement. This is the only plea taken by the petitioner. The legislatures being fully aware of what they have prescribed in Section 5 of the Dowry Prohibition Act, whereunder an agreement to give or take dowry has been declared a void agreement did not include the persons giving dowry within the scope of Section 4 of the Dowry Prohibition Act, though under section 3 of the said Act 'giver of dowry shall also be punished' scope of sections 3 and 4 are different and distinct.

14. On the applicability of Section 406 of the Indian Penal Code, none of the judgments referred by the learned Senior counsel for the petitioners would help because those judgments as noted above have been rendered in totally different fact situation. The Hon'ble Supreme Court has cautioned time and again that a judgment should not be cited like an euclid's theorem because a slightest of change in the facts of the case may result in a sea difference in the judgment of the Court and the law.

15. In the present case, the photographs which have been brought on record with the counter affidavit were not



enclosed by the present petitioners with complaint petition which has been enclosed as Annexure-1 which seems purposely done to withheld the documents which were relied upon by the learned Judicial Magistrate for the purposes of taking cognizance. Photographs as well as the statements made in complaint and deposition of the enquiry witnesses in support that the accused persons after receiving part of the agreed amount and the gold chain demanded a sum of Rs. 8 Lakhs in cash and a Alto Car, which have been brought by the complainant/Opposite Party No. 2 on record, *prima facie* satisfies this Court with the correctness of the order taking cognizance passed by the learned Judicial Magistrate. The inherent power of this Court to quash the criminal proceeding cannot be exercised in favour of the petitioners in the present case.

16. This court is, therefore, not inclined to interfere with the order taking cognizance and issuance of summons. The accused-petitioners are at liberty to raise all such pleas which are available to them at the time of framing of charge in the court below which will be considered by the court below on it's own merit without being prejudice by the



observation of this Court, here-in-above.

17. This application is dismissed. No order as to costs.

(Rajeev Ranjan Prasad, J.)

Rajeev/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	15.09.2017
Transmission Date	15.09.2017

