

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.46052 of 2013

Arising Out of Complaint .Case No. -235 Year- 2013 Thana - District- SIWAN

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1. Purushottam Sharma @ P.K. Sharma S/O Bachchulal Sharma Resident Of Village- Dhenukhi, Police Station- Marhowrah, District Saran, Presently Residing At - Quarter No.-861, Street No.-25, Sector -9C, P.S.- Harla Bokaro Steel City, District- Bokaro (Jharkhand)
 2. Mahesh @ Mahesh Sharma S/O Bachchulal Sharma Resident Of Village- Dhenukhi, Police Station- Marhowrah, District Saran, Presently Residing At - Quarter No.-861, Street No.-25, Sector -9C, P.S.- Harla Bokaro Steel City, District- Bokaro (Jharkhand)
 3. Samarjit @ Samarjit Sharma S/O Bachchulal Sharma Resident Of Village- Dhenukhi, Police Station- Marhowrah, District Saran, Presently Residing At - Quarter No.-861, Street No.-25, Sector -9C, P.S.- Harla Bokaro Steel City, District- Bokaro (Jharkhand)
 4. Vishwakarma Sharma S/O Bachchulal Sharma Resident Of Village- Dhenukhi, Police Station- Marhowrah, District Saran, Presently Residing At - Quarter No.-861, Street No.-25, Sector -9C, P.S.- Harla Bokaro Steel City, District- Bokaro (Jharkhand)
 5. Bachchulal Sharma S/O Late Ramnagina Sharma Resident Of Village- Dhenukhi, Police Station- Marhowrah, District Saran, Presently Residing At - Quarter No.-861, Street No.-25, Sector -9C, P.S.- Harla Bokaro Steel City, District- Bokaro (Jharkhand)
 6. Savitri Devi W/O Bachchulal Sharma Resident Of Village- Dhenukhi, Police Station- Marhowrah, District Saran, Presently Residing At - Quarter No.-861, Street No.-25, Sector -9C, P.S.- Harla Bokaro Steel City, District- Bokaro (Jharkhand)
 7. Babita Devi @ Babita Sharma W/O Vishwakarma Sharma Resident Of Village- Dhenukhi, Police Station- Marhowrah, District Saran, Presently Residing At - Quarter No.-861, Street No.-25, Sector -9C, P.S.- Harla Bokaro Steel City, District- Bokaro (Jharkhand)
 8. Sulekha Sharma W/O Late Ramnagina Sharma Resident Of Village- Dhenuki, P.O. + P.S.- Parouda, District- Saran.

.... Petitioners

Versus

1. The State of Bihar
2. Prabha Sharma D/O Drupnath Sharma Presently Residing At Village- Chakrabridhi, Police Station- Bhagwanpur, District- Siwan.

.... Opposite Parties.

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Appearance:

- For the Petitioner/s : Mr. Rajesh Kumar Pathak, Advocate.
- For the Opposite Party-State : Mr. Ansural Haque Sahara, A.P.P.
- For the Opposite Party no.2 : Mr. Umesh Kumar Mishra, Advocate.
- =====

CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD

CAV JUDGMENT



Date: 01-07-2017

Heard learned counsel for the petitioners and learned A.P.P. for the State as well as learned counsel appearing on behalf of the opposite party no. 2.

The petitioners in the present case are seeking quashing of the order taking cognizance and issuance of summons dated 12.03.2013 passed by learned Sub Divisional Judicial Magistrate Siwan in Complaint Case No. 235 of 2013 under Sections 498(A), 406/34 of the Indian Penal Code read with Section 4 of the Dowry Prohibition Act.

The complainant Prabha Sharma is wife of petitioner no. 1 Purushottam Sharma; petitioners no. 2, 3 and 4 are brothers of petitioner no. 1; petitioners no. 5 and 6 are father and mother respectively of petitioner no. 1; petitioner no. 7 is wife of one of the brothers of petitioner no. 1 and petitioner no. 8 is grand-mother of petitioner no. 1. All these petitioners are facing prosecution for the offences alleged as stated above.

Learned counsel for the petitioners submitted that a bare perusal of the statements made in the complaint petition would show that no *prima facie* case as alleged is made out. The order taking cognizance and issuance of summons has been passed in a routine and mechanical manner and that the complaint being a *mala fide*



complaint with the sole intention to harass the entire family members of petitioner no. 1, the same is an abuse of the process of court and is liable to be quashed.

The complaint petition is on record as Annexure – 1. There is an allegation that though in the marriage solemnized between the petitioner no. 1 and the complainant, the father of the complainant had spent lavishly and had given household goods, such as, furniture, refrigerator, T.V. and clothes, etc. as gifts, however, accused no. 1 to 5 and 8 insisted for a Hero Honda motorcycle and rupees two lacs in cash at the time of 'Vidai' of the complainant on 29.02.2008. The marriage was solemnized on 28.02.2008, at the time of Vidai, the aforesaid accused persons demanded a Hero Honda motorcycle and cash at the door of the father of the complainant, however, at the same time, on intervention of the near relatives and the witnesses, the aforesaid accused persons got convinced and Vidai took place. Further allegation is that the accused persons were demanding a Hero Honda motorcycle and abusing and assaulting the complainant which the complainant continued to bear with. On 09.11.2010 the complainant gave birth to a female child, thereafter the demand of a motorcycle and cash got intense and accused no. 6 and 7 stopped giving food to the complainant and all the accused persons were abusing the complainant. It is alleged that on 04.09.2012 the accused



persons assaulted the complainant for dowry, snatched all the ornaments and clothes of the complainant and then accused no. 1 to 5 along with her baby were left at Malmalia Chawk. Accused no. 1 to 5 threatened that unless a Hero Honda motorcycle and cash are paid they will not keep the complainant. It is alleged that the complainant has been tortured due to non-fulfillment of demand of dowry.

The complaint petition was filed in the court of the learned Chief Judicial Magistrate at Siwan on 04.02.2013, thereafter the complainant was examined on Solemn Affirmation. Apart from the complainant, two other witnesses were brought who supported the version of the complainant.

In the present case vide order dated 31.10.2013 notice was issued to the complainant – opposite party no. 2 and a co-ordinate bench of this Court stayed further proceedings in the court below till further orders. The opposite party no. 2 has appeared through Vakalatnama dated 03.01.2014, however, she has not filed any affidavit to controvert the stand of the petitioners and the materials placed on the record.

Learned counsel for the petitioners submits that a stereo type complaint was filed by the complainant after about five months from the alleged date of her ouster from her matrimonial house. The allegations mostly show the draftsmanship of a legal brain without



there being any substance and it has been purposely filed to harass the entire family due to the dispute which arose between the petitioner no. 1 and the complainant, who were living separately from the other accused persons, namely, petitioner no. 2 to 8.

Learned counsel for the petitioners submits that the three brothers of petitioner no. 1 as also the old aged parents and grand mother of the petitioner no. 1 have been falsely implicated. Petitioner no. 2 to 8 are living separately in a different quarter which will be evident from the Qr. No. mentioned in the complaint petition on the one hand and in the affidavit sworn by the petitioner no. 1 in an on-going matrimonial case bearing no. 218 of 2012 before the learned Principal Judge, Family Court, Bokaro.

Submissions have also been made that the manner in which the grand-mother of the petitioner no. 1, who is a very old lady lying on bed, and then the parents of the petitioner no. 1, who are also old aged persons, have been made accused together with all the three brothers and wife of one of the brothers are enough to show the *mala fide* motive on the part of the complainant in filing the present complaint against each and all in the family. The allegations are false and baseless and therefore the complainant chose to file a complaint case on totally vague allegations which leads nowhere. Learned counsel has submitted that there are some admitted documents on the



record. The first document is an information petition bearing no. 140/2010 filed by the petitioner no. 1 in the court of the learned Chief Judicial Magistrate, Bokaro in which he has stated that the father of the complainant had taken away the complainant without consent of the petitioner no. 1 and, on an objection raised by him, he has been threatened to get implicated in a case with the entire family. The other document is a Panchayat Agreement dated 10.08.2011, a perusal of which would show that the matrimonial dispute between the petitioner no. 1 and the complainant-wife was tried to be resolved amicably. A copy of the petition under Section 13(1)(1-a) of the Hindu Marriage Act, 1955 for dissolution of marriage by a decree of divorce earlier filed in the court of the learned Principal Judge, Family Court, Bokaro by the petitioner no. 1 is available on the record. This matrimonial case was filed on 07.09.2012 by the petitioner no. 1 and it is the case of the petitioners that after the complainant – opposite party no. 2 came to know about the said case after about five (5) months, i.e., on 04.02.2013, the present complaint case was filed.

In course of argument, learned counsel for the petitioners has also submitted a certified copy of the petition under Section 13(1a)(1b) of the Hindu Marriage Act, 1955 filed by the complainant-opposite party no. 2 giving rise to Divorce Case No. 155/2015 in the court of the learned Principal Judge, Family Court, Siwan.



Submission is that the opposite party no. 2 is herself seeking divorce as the marriage has broken between the parties irretrievably and is not likely to be restored.

Learned counsel for the petitioners submits that in the facts and circumstances neither a *prima facie* case is made out for the offence under Sections 498A and 406/34 of the Indian Penal Code nor under Section 4 of the Dowry Prohibition Act, the order taking cognizance and issuance of summons is fit to be quashed. He has also given emphasis on the plea of *mala fide* prosecution of the entire family members with the sole intention to harass them.

Learned counsel for the opposite party no. 2 submits that the order taking cognizance has been passed by the learned magistrate taking a *prima facie* view on the basis of the complaint and the statements made by the enquiry witnesses. He would thus submit that at this stage the order taking cognizance and issuance of summons need not be quashed.

This Court has examined the statements made in the complaint petition and the statements of the complainant on oath as also the other materials available on the record. The documents enclosed are mostly certified copies of the court records and have not been controverted by the complainant-opposite party no. 2.

In view of the guidelines laid down by the Hon'ble



Supreme Court in the case of **Prashant Bharti v. State of NCT of Delhi**, reported in **AIR 2013 SC 2753**, I find that those documents are in the nature of unimpeachable and uncontroverted documents relied upon by the petitioners. A reading of the complaint petition, the tone and tenor gives a clear impression that there being a matrimonial discord between the petitioner no. 1 and the complainant-opposite party no. 2, the allegations have been made in an ornamental manner against each and every member of the family including the brothers, wife of one of the brothers, parents and above all against the grand-mother of the petitioner no. 1. It is alleged that at the time of Vidai, petitioner no. 1 to 5 & 8 were demanding a Hero Honda motorcycle and rupees two lacs in cash, however, the said demand was allegedly made at the door of the father of the complainant. The petitioner no. 8 is the grand-mother, who is an elderly lady and it is improbable that she will be there at the door of the father of the complainant at the time of Vidai after marriage particularly when there is no such allegation against petitioner no. 6 who is the mother-in-law.

At this stage, the complainant submits that the accused persons got convinced and took away the complainant after Vidai but thereafter the demand continued. However, the matrimonial relationship between the petitioner no. 1 and the complainant resulted in birth of a female child and there being no complaint formally of



torture or demand of dowry during this period, it seems highly improbable that after birth of a female child the intensity of the demand increased as alleged. It further appears that according to the complainant, she was tortured and left out at Malmalia Chawk on 04.09.2012 but the present complaint case was filed after about five months. The case of the petitioner is that the complaint case was filed only after the complainant-opposite party no. 2 came to know about the filing of the matrimonial suit bearing Title Matrimonial Petition No. 218/2012 in the court of the learned Principal Judge, Family Court, Bokaro. The submission of the petitioners has got force as is evident from the record.

The complainant has herself filed an application for divorce and therefore the petitioner no. 1 and the complainant-opposite party no. 2 both are now on the same line seeking annulment of marriage by a decree of divorce. On perusal of the complaint petition, the manner in which the allegations have been made and the materials available on the record, this Court takes a view that prosecution of all the family members such as brothers of the petitioner no. 1, wife of one of the brothers of the petitioner no. 1, parents of the petitioner no. 1 and the grand-mother of the petitioner no. 1 is only a *mala fide* prosecution. The family members such as petitioner no. 2 to petitioner no. 8 have been implicated on vague and



omnibus allegations of demand of dowry and torture but there is no sufficient material on the records to proceed against them.

In the facts and circumstances of the case, this Court is inclined to set aside the order taking cognizance and issuance of summons dated 12.03.2013 as regards the family members, i.e., petitioner no. 2 to 8, hence, the summons issued to petitioner no. 2 to 8 is hereby quashed. The prayer for quashing of summons by the petitioner no. 1 is rejected at this stage. The petitioner no. 1 will have liberty to raise all such submissions and grounds which are available to him at the time of framing of charge in the court below which will be considered by the learned court below on its own merit and materials.

The application is partly allowed to the extent indicated here-in-above.

(Rajeev Ranjan Prasad, J)

Dilip, AR

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