

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.22469 of 2014

Arising Out of PS.Case No. -2310 Year- 2012 Thana -BHAGALPUR COMPLAINT CASE District-
BHAGALPUR

- =====
1. Moni wife of Md. Sanjoor
 2. Raja son of Md. Sanjoor
 3. Tarannum Daughter of Md. Sanjoor all resident of vill/Moh. - Pokharia, P.S. Begusarai, District – Begusarai.
 4. Jawed Sarwar son of late Md. Ishaque resident of mohalla - Vishwanathganj, Ward No. 5, P.S. Khagaria, Distt. - Khagaria

.... Petitioner/s

Versus

1. The State of Bihar
2. Najma Khatoon wife of Md. Asfaque Alam, Daughter of Md. Haroon, presently residing at village - Barahat Ishipur, P.S. Barahat, Distt. - Bhagalpur

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Manoj Kumar Singh, Adv.

For the Opposite Party No.1: Mr. APP

For the Opposite Party No.2: Mr. S.M. Ashraf, Adv.

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CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH

CAV JUDGMENT

Date: 29-11-2017

The Opposite Party No. 2 had filed a Complaint Case No. 2310 of 2012 dated 9.10.2012 against the petitioners herein as well as her husband namely Asfaque Alam, inter alia, stating therein that her marriage was solemnized on 11.6.2005 and on 12.6.2005 she had gone to her matrimonial home and during the course of their matrimonial relation, two children were born out of their wedlock. During the course of time, it transpired that the husband of the complainant is having illicit relation with the petitioner no.3 herein and upon protest, the complainant was sent to her parent's home by



her husband in the month of January, 2011. Subsequently, the matter was patched up and the complainant is said to have gone with her husband to her matrimonial home on 27.3.2011. However, after sometime, the accused persons started torturing the complainant for not fulfilling the demand for dowry and ultimately, she was compelled to go to her parent's house on 30.1.2012.

2. The learned court of Judicial Magistrate, 1st Class, Bhagalpur by an order dated 2.1.2013 (wrongly typed as "2.1.2012"), on the basis of the statement of the complainant on solemn affirmation as well as on the basis of the evidence of two witnesses produced on behalf of the complainant, has found that a prima facie case is made out under Section 498A of the Indian Penal Code and has issued summons to the petitioners herein.

3. The learned counsel for the petitioners submits that the husband of the Opposite Party No.2 has filed one Matrimonial Case No. 73 of 2012 before the learned court of Principal Judge, Family Court, Khagaria for restitution of conjugal right and after filing of the same, the Opposite Party No.2 has filed the aforesaid complaint. It is further submitted that as far as the petitioners herein are concerned, there is no specific allegations against them regarding demand of dowry or subjecting the complainant to cruelty. It is further submitted that as far as the petitioner no.1 is concerned, she is married 'nanad'



(sister-in-law) and the petitioner nos. 2 and 3 are the children of the petitioner no.1 and the petitioner no.4 is brother of the husband of the Opposite Party No.2.

4. Per contra, the learned counsel for the Opposite Party No.2 has submitted that there are ample evidence so as to make out a case for commission of cognizable offence by the petitioners herein, hence the present petition is misconceived and is fit to be dismissed.

5. It is a trite law, as laid down by the Hon'ble Apex Court, in a case reported in *1992 supp (1) SCC 335 [State of Haryana and others v. Bhajan Lal and others]* that in case, upon a bare perusal of the complaint/ FIR no offence is made out, the High Court can very well invoke the inherent jurisdiction under Section 482 of the Code of Criminal Procedure for quashing the criminal proceeding.

6. In the instant case, upon perusal of the complaint petition and the material on record, it is clear that as far as the petitioners herein are concerned, no specific allegation of any cruelty has been alleged by the Opposite Party No.2, hence I find that the allegations levelled in the complaint petition do not disclose commission of any cognizable offence, and the order dated 2.1.2013 (wrongly typed as "2.1.2012) passed by the learned Judicial Magistrate, 1st Class, Bhagalpur in Complaint Case No. 2310 of 2012



is fit to be quashed.

7. Accordingly, the petition is allowed and the order dated 2.1.2013 (wrongly typed as 2.1.2012) passed by the learned Judicial Magistrate, 1st Class, Bhagalpur, as far as the petitioners herein are concerned, is quashed.

8. It is made clear that quashing of the complaint case, as against the petitioners herein, would not be treated as a precedent as far as the husband of the opposite party no. 2 is concerned.

(Mohit Kumar Shah, J.)

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AFR/NAFR	NAFR
CAV DATE	22.11.2017
Uploading Date	29.11.2017
Transmission Date	29.11.2017

