

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.53310 of 2013

Arising Out of PS.Case No. -812 Year- 2012 Thana -PATNA COMPLAINT CASE District-
PATNA

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Vinay Kumar Roy @ Vinay Roy @ Vinay Rangila Roy & Ors
..... Petitioner/s

Versus

State of Bihar & Anr
..... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Arbind Kumar Sharma
For the complainant : Mr. Brajnandan Singh
For the Opposite Party/s : Mr. Surendra Pd.Singh(App)

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CORAM: HONOURABLE MR. JUSTICE VINOD KUMAR SINHA
ORAL ORDER

3 31-01-2017 This application has been preferred by the petitioners under Sections 482 of the Cr.P.C. for quashing order dated 28.2.2013 passed by the Sub-Divisional Judicial Magistrate, Barh in Complaint Case No.812(C) of 2012 whereby and whereunder after finding prima facie a case under Section 498 of the Indian Penal Code and under Section 3/4 of the Dowry Provision Act, the learned Sub-Divisional Judicial Magistrate, Barh has ordered for issuance of processes.

The prosecution story in short is that the complainant-Opp. Party No.2 was married with the son of the petitioner no.1 and 2 and the petitioner no.3 is brother-in-law. On 19.5.2011 at the time marriage articles worth Rs.5,00,000/- was given to the petitioners' family. It is also the case of the complainant that after



the marriage, she went her 'Sasural' and there she resided for four days and thereafter, they went to Majri where the petitioner no.1 is employee in Coal-field. Further case of the complainant is that on 25.5.2011 accused persons –petitioners demanded a gold chain and pair of gold kangna as it was promised at the time of marriage and further they threatened that if the same would not be given she would not be allowed to live and it is also her case that for that she was assaulted by the accused persons with slaps about which she informed his family members, who came there and talked the accused persons and returned back and later on her maternal uncle also came to Majri and talked with the accused persons but of no fruit hence, she came back along with her uncle at Mokama. However, she was again taken to Majri and assaulted for 2 to 4 days thereafter her husband and father-in-law dropped her to Patna and still they are demanding Rs.2,00,000/- from the complainant's family.

On the basis of the aforesaid complaint petition Complaint Case No.812 (C) of 2012 has been registered and after enquiry, the learned Sub-Divisional Judicial Magistrate, Barh finding *prima facie* a case under Section 498A of Indian Penal Code and under



Section 3/ 4 of the Dowry Prohibition Act as such order dated 28.2.2013 ordered issuing processes is under challenge in the present application.

It is submitted on behalf of the petitioners that whatever allegations are made in the complaint petition that relates to Majri, which is situated in Maharashtra, as such the order taking cognizance/issuance of processes is bad in law as the learned Sub-divisional Judicial Magistrate, Barh has no jurisdiction to take cognizance on the aforesaid complaint. Second submission of the learned counsel for the petitioners is that from perusal of the whole allegation petition, it will appear that there is no specific allegation rather there is general allegation against all the accused persons but nowhere it is stated that as to what allegations are attributed against each of the accused persons and it is well established by various decisions of the Hon'ble Supreme Court that in matrimonial cases, the learned Judicial Magistrate while taking cognizance has to be proceeded to see as to what are the allegations attributed against each of the petitioners but in the present case, no such allegations are there.

It is further submitted that the petitioner no.1 is the father-in-law and the petitioner no.2 is mother-in-law and the petitioner



no.3 is '*Nanad*'. As such the learned Sub-divisional Judicial Magistrate, Barh ought not to have issued processes against these petitioners.

Heard learned A.P.P. and the learned counsel for the Opposite Party No.2. They have opposed the application stating that from perusal of the complaint petition itself, it appears that there are allegations against all the accused persons of assault and demanding dowry and harassing the informant for that the learned Sub-divisional Judicial Magistrate, Barh, after enquiry, finding a prima facie case under Section 498A of the Indian Penal Code and Section 3 of the Dowry Prohibition Act had issued processes against these petitioners, as there is nothing illegal in it and there is no error apparent on the face of the record.

Having heard both sides. Perused the record as this is a case of 2013 and vide order dated 18.11.2014, the further proceedings in the court below was stayed by this Court and the opposite parties have appeared in this case, as such I think it is proper to finally dispose of this application at admission stage.

From perusal of the impugned order as well as the complaint petition, it appears that the Opposite Party No.2 has filed a complaint petition and after enquiry, the learned Sub-



divisional Judicial Magistrate, Barh finding a prima facie case against the petitioners had issued processes against them, which has been challenged by the petitioners.

So far first contention of the learned counsel for the petitioners regarding jurisdiction of the court below is concerned, it is not proper to this Court to enter into the jurisdictional point rather the petitioners should raise this point before the court below itself, which will be decided on the basis of materials available on the record.

So far second contention is concerned, there is no specific allegation against the petitioners. No doubt the Hon'ble Apex Court in the case of **Neelu Chopra – Vrs.- Bharti** : (2009) 10 SCC 184, **Geeta Mehrotra and another – Vrs.- State of Uttar Pradesh and another** : (2012) 10 SC 741 and **Preeti Gupta and another – Vrs.- State of Jharkhand and another** : (2010) 7 SC 667 has held that it has now become tendency especially in the case of marriage bickering that whole family members may be made accused to settle score as well as to make it sure that nobody will spare to make '*pairvi*' in the case, though at best in family dispute it is the husband, who is the mainly responsible for any bickering and his father and mother are also responsible for the same but



so far other members of the family are concerned they are having their separate identity hence they can not be made accused with the husband. In such cases, it has been held further by the Hon'ble Supreme Court that cases of each accused persons be examined to find out as to what are the allegations *prima facie* against them before taking cognizance.

In the present case on perusal of the complaint petition itself, it appears that the main allegations are against the husband and father-in-law, who left the Opposite Party No.2 to his Maternal's house and fled away and so far other allegations are concerned there is general allegation against all the accused persons with respect to demand of a golden chain and two 'kangans' and it is alleged that on its refusal, she was assaulted by all the accused persons but no specific allegation has been attributed against them. The further allegation is that when the family members of the complainant tried to pacify the matter, they threatened to get his son married at some other place, as such from perusal of the entire petitions, it appears that there is no specific allegation attributed against petitioner no.2 and 3, though there are general and omnibus allegation against them of assault and demand of dowry. So far petitioner no.1 is concerned,



apart from the general allegation it is alleged that he and his son left her in her maternal uncle's house and fled away and they are not ready to keep her and petitioner no.1 threatened to re-marry the husband of the complainant. As such from perusal of the complaint petition, it appears that whatever allegations are concerned, it is not specific against each person but there are sufficient allegations against petitioner no.1 and husband of the complainant.

I have been informed by the Opposite Party No.2 that the application for quashing order taking cognizance of the husband of the complainant has already been disposed of with observation to raise the points at the time of framing of the charges.

Having considered the aforesaid facts, so far application for quashing of order issuing processes against the petitioner no.1 is concerned, I am not inclined to interfere with the same. Hence, the same is disposed of with liberty to the petitioner no.1 to move before the learned court below at the stage of framing of the charge.

So far issuance of processes dated 28.02.2013 against the petitioner nos.2 and 3 is concerned, in view of the



discussions made above, the same is allowed and order dated 28.02.2013 with respect to petitioner nos. 2 and 3 is quashed.

Accordingly, this application is partly allowed.

(Vinod Kumar Sinha, J)

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