

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.49983 of 2014

Arising Out of PS.Case No. -403 Year- 2014 Thana -COMPLAINT CASE District- SUPAUL

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1. Md. Hazrat son of Md. Khuda Baksh
2. Md. Daud son of Md. Khuda Baksh
3. Md. Kudwa son of Md. Khuda Baksh
4. Md. Khuda Baksh son of Late Kinu Miya
5. Bibi Sadina wife of Md. Khuda Baksh All are resident of village -
Simrahi, P.S. Raghapur, District - Supaul

.... Petitioners

Versus

1. The State of Bihar
2. Khairul Khatoon wife of Md. Hazrat, D/o Md. Juman resident of
village - Rampur, P.S. Raghapur, District - Supaul

.... Opposite Party

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Appearance :

For the Petitioner/s : Mr. Amrit Abhijat, Advocate

For the Opposite Party/s Mrs. Rina Sinha, APP

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD

ORAL JUDGMENT

Date: 06-12-2017

Heard learned counsel for the petitioners and
learned Additional Public Prosecutor for the State.

Petitioners are aggrieved by the order dated
12.11.2014 passed by learned Sub-Divisional Judicial
Magistrate, Birpur, District – Supaul by which learned
Magistrate has taken cognizance under Sections 498A, 341 of
the Indian Penal Code and Section 4 of Dowry Prohibition Act,
1987 in Complaint Case No. 403C/2014.



A supplementary affidavit on behalf of the petitioners has been filed today. Submission is that the father of Khairul Khatoon (complainant) has stated on affidavit filed before the learned Sub-Divisional Judicial Magistrate in the present case that he is not interested in deposing as a witness in the present case. He has further stated that his daughter Khairul Khatoon has married to one Md. Rahbul and has gone with him along with her two sons and one daughter. It is stated in the affidavit that, according to the father of the complainant-Opposite Party No. 2, she is presently living with Md. Rahbul in New Delhi.

Learned counsel has further drawn my attention towards the order-sheets enclosed with the supplementary affidavit to contend that in fact the complainant-Opposite Party No. 2 is not doing any kind of *pairvy* in the complaint case since 19.08.2015. Submission is that immediately after the issuance of summon to the present petitioners, the complainant-Opposite Party No. 2 has left *pairvy*, but for the last two years, these petitioners are being harassed due to pendency of the complaint case in absence of the complainant-Opposite Party No. 2.



In the present case, notice was issued to complainant-Opposite Party No. 2 and she has appeared through *Vakalatnama*, but no one appears to represent her when the case is taken up for hearing and disposal.

I find substance in the submission of learned counsel for the petitioners, at least to this extent that for the last two years the complainant-Opposite Party No. 2 is not putting her appearance in the court below and her father has filed affidavit in the complaint case stating the facts noted hereinabove. In the facts and circumstances, the continuation of the complaint case without any further progress for over two years is definitely in the nature of harassment to these petitioners.

Learned counsel for the petitioners submits that since it is a complaint case and the complainant-Opposite Party No. 2 is not bringing any evidence at the stage of evidence before charge as has been envisaged under Section 244 Cr.P.C., he may be advising these petitioners to file an application under Section 245(2) Cr.P.C. in the court below for an appropriate order.

In the facts and circumstances stated



hereinabove, it is observed that, if the petitioners file an application in the court below in accordance with law, the same shall be considered by the learned Sub-Divisional Judicial Magistrate, Birpur and an order shall be passed thereon within a period of two months from the date of filing of such an application.

In the aforesaid view of the matter, this Court is not interfering with the order taking cognizance at this stage.

This application is, accordingly, disposed of.

(Rajeev Ranjan Prasad, J.)

Rajeev/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	07.12.2017
Transmission Date	07.12.2017

