

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.48281 of 2013

Arising Out of PS.Case No. -2615 Year- 2012 Thana -EAST CHAMPARAN COMPLAINT
District- EASTCHAMPARAN(MOTIHARI)

- =====
1. Ragini Kumari Daughter Of Rama Kant Ojha Resident Of Village - Phulwaria, Police Station - Gopalganj In The District Of Gopalganj.
 2. Rakesh Kumar Son Of Rama Kant Ojha Resident Of Village - Phulwaria, Police Station - Gopalganj In The District Of Gopalganj.
 3. Brijmati Devi Wife Of Rama Kant Ojha Resident Of Village - Phulwaria, Police Station - Gopalganj In The District Of Gopalganj.
 4. Rama Kant Ojha Son Of Ramgyan Ojha Resident Of Village - Phulwaria, Police Station - Gopalganj In The District Of Gopalganj.
 5. Suresh Upadhyay @ Surendra Upadhyay Son Of Prabhunath Upadhyay Resident Of Vilalge- Barauli(Sisai), Police Station - Barauli In The District Of Gopalganj.
 6. Nitesh Tiwari @ Nitesh Kumar Tiwary Son Of Sushil Tiwary Resident Of Village - Gausia, Police Station - Gopalganj In The District Of Gopalganj.
 7. Neha Tiwari Wife Of Nitesh Tiwary Resident Of Village - Gausia, Police Station - Gopalganj In The District Of Gopalganj.

.... Petitioner/s

Versus

1. The State Of Bihar

.... Opposite Party/s

=====

Appearance :

For the Petitioner/s : Mr. Dwivedy Surendra, Advocate
For the Opposite Party/s : Mr. Ram Sumiran Roy, APP

=====

CORAM: HONOURABLE MR. JUSTICE BIRENDRA KUMAR

ORAL JUDGMENT

Date: 10-01-2017

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

2. Opposite Party No.2 Aakanksha Priya filed complaint
Case No.C-2615 of 2012 in the Court of learned Sub-Divisional
Judicial Magistrate, Motihari Sadar, East Champaran, Motihari,
against seven accused persons i.e., husband and other relations for
offences under Sections 420/406/498A of the Indian Penal Code as
well as Sections 3/4 of the Dowry Prohibition Act.



3. All the seven accused persons are petitioners herein, they have challenged the order dated 19.03.2013 passed in the aforesaid complaint case whereby process has been issued against the petitioners to face trial for the offences aforesaid in exercise of power under Section 204 Cr.P.C.

4. The record reveals that the matter was earlier heard by the Bench of Hon'ble Mr. Justice Ashutosh Kumar and by order dated 16.10.2014 the impugned order was quashed in respect of petitioner No.1 Ragini Kumari, petitioner No.5 Suresh Upadhyay @ Surendra Upadhyay, petitioner No. 6 Nitesh Tiwari @ Nitesh Kumar Tiwari and petitioner No.7 Neha Tiwari.

5. This Court passed following orders in respect of petitioner No.2 Rakesh Kumar, the husband of the complainant, petitioner No.3 Brijmati Devi, the mother-in-law of the complainant and petitioner No.4 Rama Kant Ojha, the father-in-law of the complainant:

“The cases of the petitioners no. 2, 3 & 4 is referred to the Mediation Centre of the Patna High Court. The Mediator would also amongst other things see that if the restitution of conjugal life of the opposite party no. 2 with her husband is not possible, then one-time-settlement also could be an alternative for the dispute redressal.

It has been submitted on behalf of the



petitioners that the petitioner no. 4, who is the father-in-law of the opposite party no. 2, is a physically handicapped person and it would not be possible for him to personally present in the mediation proceedings. The Mediator would take into account such aspect, namely, the petitioner no. 4 being a physically challenged and would not insist for his coming to the Mediation Centre. He should be well represented by anyone of his relatives or emissaries, whom he would choose.

The process of mediation is likely to be over within a period of five months.

List this matter after five months.”

6. The matter was sent to the mediator. The husband did not appear ever before the mediator as he was in Canada and is still in Canada. The father-in-law also did not appear due to his physical inability. Only the complainant and the mother-in-law appeared. The report dated 09.02.2015 reveals that the matter could not be resolved.

7. Submission of the petitioners is that the false complaint case had been filed at the instigation of some person having dominance over the will of the complainant. The marriage was solemnized on 25.04.2012 and complaint case was filed soon thereafter on 27.09.2012 deliberately and without waiting for



amicable settlement of the dispute. Moreover, the husband is always ready for amicable settlement, however, due to circumstances beyond his control as no leave was allowed to him he could not come back and appear before the mediator.

8. On the other hand, learned counsel for the Opposite Party No.2 submits that there is allegation of demand of more dowry and torture in the complaint petition; rather specific allegation is there against the husband, the father-in-law and the mother-in-law. The husband has deliberately not appeared for amicable settlement in pursuance of the order dated 16.10.2014. Moreover, for the subsequent criminal acts committed by the in-laws under the provisions of Domestic Violence Act and the Indian Penal Code, separate cases under Section 498A of the Indian Penal Code has been lodged.

9. Considering the fact that prima facie offence is disclosed against these petitioners in the complaint petition. There is no reason to quash the proceeding against these petitioners. Hence, the prayer is refused. However, it shall be open during the course of trial that the parties may reach an amicable settlement and the Court-below shall disposed of the matter in pursuance of the settlement arrived at by the parties. In absence of specific prayer for amicable settlement the Court-below shall proceed according to law.



10. With the aforesaid observation, this application stands dismissed against petitioner Nos.2 to 4.

(Birendra Kumar, J)

Mkr./-

AFR/NAFR	NAFR
CAV DATE	
Uploading Date	17.01.2017
Transmission Date	17.01.2017

