

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.32044 of 2013

Arising Out of PS.Case No. -null Year- null Thana -null District- NAWADA

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1. Md. Shakeel son of Md. Jabbar, resident of Village - Chhonu Bigha, P.S.- Sirdalla, District - Nawadah
 2. Md. Jabbar son of Late Bofati Miyan @ Bofati Hussain, resident of Village - Chhonu Bigha, P.S.- Sirdalla, District - Nawadah
 3. Md. Shahjadi wife of Md. Jabbar, resident of Village - Chhonu Bigha, P.S.- Sirdalla, District – Nawadah

.... Petitioner/s

Versus

1. The State of Bihar
2. Roksad Praveen (Ex) wife of Md. Shakeel, resident of Village - Chhonu Bigha, P.S.- Sirdalla, District - Nawadah at present residing at Daughter Of Md. Manowar, Chhounu Bigha, P.S.- Sirdalla, District - Nawadah

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Arun Kumar, Advocate
Mr. Bipin Kumar, Advocate
For the Opposite Party No.1 : Mr.Sanjay Kumar Tiwary, APP
For the Opposite Party No.2 : Mr.

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CORAM: HONOURABLE MR. JUSTICE SANJAY PRIYA

ORAL JUDGMENT

Date: 02-02-2017

Heard learned counsel for the parties.

2. This petition has been filed on behalf of the petitioners for quashing the order dated 28.07.2012 passed by the learned S.D.J.M., Nawadah in Complaint Case No. 668 of 2012 by which he has taken cognizance against the petitioners for the offence punishable under Sections 498A of the Indian Penal Code.

3. Learned counsel for the petitioners has submitted that prior to filing of the present complaint case, a divorce case was filed



by the Complainant on 13.03.2012 wherein a compromise petition was filed on 23.03.2012 and statement of the complainant was also recorded in the aforesaid divorce case, which has been annexed to this petition. Thereafter, the court below vide order dated 23.03.2012 closed Matrimonial (Divorce) Case No. 52 of 2012 on the basis of the statement made by the Complainant and on the basis of prayer made by her to drop the case.

4. Learned counsel for the petitioners further submitted that after passing of the order dated 23.03.2012, the complainant has filed present Complaint Case No. 668 of 2012 on 04.06.2012 levelling false allegations against the petitioners merely to harass her husband and other family members. Learned counsel has also submitted that general and omnibus allegations have been levelled in the complaint petition and in solemn affirmation. Learned counsel has placed reliance upon a decision of the Hon'ble Supreme Court in the case of **Geeta Mehrotra and others Vs. State of U.P. and another reported in PLJR 2013(1) SC 10** wherein it has been held that proceeding on the basis of general and omnibus allegation against the husband and his other family members is bad in law.

5. Learned counsel for opposite party no.2 has submitted that the signature of Complainant on Annexures 1, 2, 3 and 4 rather belongs to some other lady. He has further submitted that the



Complainant never appeared before the Family Court for her cross-examination and there is no knowledge of the order dated 23.03.2012, but no counter affidavit has been filed on behalf of the opposite party no.2 in support of such statements. Her counsel is just making such submissions during course of argument of the case.

6. Learned APP submits that there is no illegality in the impugned order.

7. From perusal of the impugned order as well as solemn affirmation of the Complainant which have been produced by the learned counsel during course of argument of the case, this Court finds that the court below has mentioned that on the basis of S.A. of Complainant and statement of three witnesses, prima facie case is made out under Section 498(A) of the Indian Penal Code against the petitioners. On perusal of the certified copy of the solemn affirmation of the Complainant produced by the learned counsel for the petitioners during course of argument, this Court finds that general and omnibus allegations have been made against the petitioners. In the complaint petition also omnibus and general allegations have been made by the Complainant. It further appears from the order dated 23.03.2012 (Annexure-5) that prior to filing of the present case, a divorce case was filed by the Complainant which was closed on the basis of the statements given by the Complainant herself in court to



close the case on the basis of compromise entered into between the parties stating therein that both are living separately.

8. In this manner, this Court finds that continuance of such proceeding against the petitioners will be an abuse of the process of the court. Accordingly, impugned order dated 28.07.2012 passed in Complaint Case No. 668 of 2012 by learned SDJM, Nawada as well as the entire proceeding against the petitioners are quashed.

9. The present petition is allowed.

(Sanjay Priya, J)

Tahir/-

AFR/NAFR	
CAV DATE	
Uploading Date	13.2.2017
Transmission Date	13.2.2017

