

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.37688 of 2013

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

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1. Damodar Prasad Singh Son Of Late Jagat Narayan Singh Resident Of Mohalla - Yadav Lane, Inforit Of Patna College, Maa Gayatri Girls Lodge, P.S. - Pirbahore, District-Patna (Bihar)
 2. Daya Devi Wife Of Damodar Prasad Singh Resident Of Mohalla - Yadav Lane, Inforit Of Patna College, Maa Gayatri Girls Lodge, P.S. - Pirbahore, District-Patna (Bihar)

.... Petitioner/s

Versus

1. State Of Bihar
2. Savita Devi Wife Of Kumar Dayanand Prasad Singh Resident Of Mohalla - Yadav Lane, Infront Of Patna

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Sushil Kumar Singh, Advocate
For the Opposite Party/s : Mr. Shyam Kumar Singh, APP

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CORAM: HONOURABLE MR. JUSTICE BIRENDRA KUMAR

ORAL JUDGMENT

Date: 14-09-2017

Heard learned counsel for the petitioner and the State.

No one appears on behalf of Opposite Party No.2 though appearance has been filed.

2. The petitioners are parents of the husband of Opposite Party No.2 Savita Devi. Opposite Party No.2 filed a complaint case bearing Complaint Case No.3373(C) of 2011 against the petitioners only alleging therein demand of dowry and torture for the same since after marriage of the complainant with Kumar Dayanand Prasad Singh in the year 1992. However, the complainant continued to bear the torturing under social pressure. Hence, delay in filing of the complaint case.

3. By the impugned order dated 20.06.2012 passed in the



aforesaid complaint case; the learned Court-below has taken cognizance against the petitioners for the offence under Section 498A/34 Of the Indian Penal Code.

4. Learned counsel for the petitioners submits that the complaint petition suffers from malice and the impugned order suffers from non-application of judicial mind. Hence, the entire criminal prosecution against the petitioners is fit to be quashed. Learned counsel for the petitioner further submits that husband of the complainant was married earlier with another lady, who died leaving behind son and daughters. The children were residing with the petitioners. Thereafter, the son of the petitioners Kumar Dayanannd Singh married with the complainant in the year 1992. Since some property were acquired by the mother from her parent's side wherein name of the husband of the complainant was recorded due to love and affection as he was a minor. The complainant started pressurizing her husband to get share in those properties also and family disputes was created. Thereafter the petitioners filed Title Suit No.115 of 2011 before the learned Sub-Judge-I, Munger, against the husband of the complainant, ventilating their absolute claim on the suit property and narrating the entire story including the first marriage of the husband of the complainant and death of the first wife leaving the children, who reside with the petitioners, vide copy of the plaint at Annexure-3.

5. In **Gita Mehrotra and another V. the State of U.P.**



and Another reported in **2013 (1) P.L.J.R. SC Page-10** the Hon'ble Supreme Court held that now a days tendency has developed in general to rope all the family members in a case under Section 498A of the Indian Penal Code in order to unduly harass the family members by merely giving casual reference of the name of the family members of the matrimonial house with general and vague allegation of their involvement in the harassment.

In **Pepsi Foods Limited V. Judicial Magistrate** reported in **(1998)5 SCC 749**, the Hon'ble Apex Court observed as follows regarding duty of the Magistrate while summoning the accused;

“Summoning of an accused in a criminal case is a serious matter. Criminal law cannot be set into motion as a matter of course. It is not that the complainant has to bring only two witnesses to support his allegations in the complaint to have the criminal law set into motion. The order of the magistrate summoning the accused must reflect that he has applied his mind to the facts of the case and the law applicable thereto. He has to examine the nature of allegations made in the complaint and the evidence both oral and documentary in support thereof and would that be sufficient for the complainant to succeed in bringing charge home to the accused. It is not that the Magistrate is a silent spectator at the time of recording



of preliminary evidence before summoning of the accused. Magistrate has to carefully scrutinize the evidence brought on record and may even himself put questions to the complainant and his witnesses to elicit answers to find out the truthfulness of the allegations or otherwise and then examine if any offence is prima facie committed by all or any of the accused.”

6. Learned counsel for the State-respondent opposed the prayer. However, does not dispute the factual position of the case appearing on the record.

7. Considering the aforesaid law as well as the background of the allegation against the petitioners and the fact that the husband is not an accused in the case, the complaint petition apparently shows to have been filed with motive to harass and pressurize the petitioners in the property dispute. The learned Court-below has not considered the background of the allegation. Hence, the impugned order is not sustainable in law. Accordingly, the same is quashed and this application stands allowed.

(Birendra Kumar, J)

Mkr./-

AFR/NAFR	NAFR
CAV DATE	NA
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