

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.46480 of 2013

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

- =====
1. Raunak Siddiqui Son of Rasid Siddqui
 2. Rasid Siddqui Son of Late Abdul Haque
 3. Jahida Siddqui Wife of Rasid Siddqui

All Resident of Village-Sheikh Muhalla Churi Mandi, P.S.-Siwan
Town, District-Siwan

.... Petitioners

Versus

1. The State of Bihar
2. Yashmin Praveen, D/o Jalalludin Khan, W/o – Raunak Siddiqui,
R/o Mohalla – Sheikh Muhalla Churi Mandi Siwan, P.S. – Siwan
Town, district – Siwan, at present resident of village –
Bishambharpur, P.S. – Pachukhi, District – Siwan.

.... Opposite Party

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Appearance :

For the Petitioners	:	Mr. Ranjeet Kr. Pandey, Advocate
For the Opposite Parties	:	Mr. Jay Prakash Singh, Advocate
		Mr. Shyam Bihari Singh, Advocate
For the State	:	Mr. Jitendra Kr. Singh, APP

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL JUDGMENT

Date: 26-07-2017

Heard learned counsel for the petitioner,
learned counsel for the opposite party no. 2 and
learned Additional Public Prosecutor for the State.

The petitioners are husband, father-in-law and mother-in-law of the victim lady, who is opposite party no. 2 in the present case, are seeking quashing of the order dated 16.05.2013, passed by learned Judicial Magistrate, 1st Class, Siwan, in



Complaint Case No. 391/2013, by which learned Magistrate has taken cognizance of the offences under Section 498A of the Indian Penal Code and decided to issue summon against the petitioners.

Learned counsel for the petitioners has assailed the order taking cognizance on the ground that the allegation as made in the complaint are false, concocted and baseless and the learned Magistrate has taken cognizance in a routine and mechanical manner.

Learned counsel for the petitioners further submits that so far as petitioner no. 2 & 3 are concerned, they are father-in-law and mother-in-law respectively and in many a judicial pronouncement of the Hon'ble Supreme Court reliefs have been granted to father-in-law and mother-in-law in a case under Section 498A I.P.C. Referring to Annexure-2 to the petition, learned counsel for the petitioners submits that the same is a decree of divorce granted by Darool Kaza Emaarat-E-Sharia, Siwan and Gopalganj in Case No. 36/448 of 1433 Hizari on 20.12.2012, and only thereafter the present complaint has been filed.



A counter affidavit has been filed on behalf of the complainant/opposite party no.2, in which the opposite party no. 2 has specifically denied the claim of the petitioners that there was a divorce between the parties. In paragraph 2 of the counter affidavit following statements have been made which reads as such:

“2. That the fact as claimed by the petitioner that both the parties have signed divorce paper with their consent before Darool Kaza Emaarat-E-Sharia is totally false and the complainant/O.P. No.2 has never signed any of such document.”

A further reading of the counter affidavit which has been placed by learned counsel representing opposite party no.2 would show that the opposite party no.2 is vehemently disputing the divorce paper which the petitioner no. 1 produced before the learned court of Sessions Judge, Siwan for the purpose of anticipatory bail. In fact, the allegation of opposite party no. 2 is that the same is totally forged and fabricated documents.

It is further pointed out that the petitioner



no.1, while seeking Anticipatory Bail in Cr. Misc. No. 43855/2013, was directed to deposit Rs. 750/- per month, as interim maintenance to the opposite party no. 2, but the same was not deposited, thereafter, at the instance of the court, a mediation took place as the petitioner no.1 had shown willingness to settle the matter.

Learned counsel for the opposite party no. 2 further submits that, in fact, a perusal of the order dated 02.07.2014, passed by a coordinate Bench of this Court in Cr. Misc. No. 43855/2013, would show that the petitioner no.1 had given an undertaking before the court for purpose of Anticipatory Bail whereunder he had agreed to pay a sum of Rs. 11 lacs by way of demand draft payable to opposite party no. 2 as interim arrangement without prejudice to case of either parties. This court vide its order dated 02.07.2014 passed in the said Cr. Misc. No. 43855/2013, directed that on payment of the said amount by way of demand draft within the aforesaid period the provisional anticipatory bail granted to the petitioner shall stand confirmed.



The grievance of the opposite party no. 2 is that the petitioner no. 1 took benefit of the said order dated 02.07.2014 passed by a coordinate Bench of this Court and kept on getting extended the date before the court below with an assurance to deposit the amount but the same was not done. After losing hopes, the learned Judicial Magistrate, 1st Class, Siwan, vide his order dated 18.05.2016, cancelled the bail bond of the petitioner no. 1, thereafter, also he remained free by virtue of interim protection granted by this Court in the present case.

Further submission of learned counsel for the opposite party no. 2 is that the order taking cognizance has been passed on the basis of material available on the record, this Court would not go into the merit of the allegations at this stage and on a bare reading of the complaint supported by the statement on oath of the complainant and the inquiry witnesses would show that an offence under Section 498A is *prima facie* made out.

On the last date, when this Court had come to know that the petitioner, despite disobeying



the order dated 02.07.2014, passed by a coordinate Bench of this Court in the said Cr. Misc. No. 43855/2013, is moving freely by virtue of an interim protection of this Court in the present case, the same was vacated, as the petitioner who had disobeyed an order of this Court could not have been allowed to take benefit of another order of this Court. For the reasons mentioned in the order dated 19.07.2017 the interim order was vacated.

Since, it is a case under Section 498A I.P.C. arising out of a matrimonial dispute, this Court once again made a specific query to learned counsel representing the petitioners as to whether his clients particularly petitioner no.1 is still ready and willing to pay the total amount of Rs. 11 lacs and comply with the order of this Court, the reply of learned counsel is not bona fide. The learned counsel for the petitioners attempted to dispute the order by resiling from the undertaking given by petitioner no.1. Learned counsel submitted that his client cannot pay the said amount and go on contesting the cases brought by this complainant. There is not even assurance that



his client is ready and willing to deposit the amount within a week or so. These facts are being recorded in order to take note of the *bona fide* of the petitioners in pursuing the present application, by which he is invoking inherent jurisdiction of this Court to quash the criminal proceeding.

I have perused the complaint petition and the materials available on record. The Hon'ble Supreme Court in the Case of **State of Harayana Vs. Bhajan Lal** since reported in **(1992) Supp (1) SCC 335**; has laid down by way of illustrations as many as seven examples, whereunder the court can exercise its jurisdiction under Section 482 of the Code of Criminal Procedure.

Learned counsel for the petitioners submits that the allegations are false, concocted and baseless, but this Court, on a bare reading of the complaint petition, would come to a conclusion that without adding or subtracting anything out of it, the complaint petition discloses a *prima facie* case under Section 498A. The complainant and inquiry witnesses have supported the allegation specifically made



against these petitioners. The learned Magistrate has found a *prima facie* case of torture/cruelty against these petitioners. So far as the merit of the allegations are concerned, the Hon'ble Supreme Court has cautioned repeatedly that in exercise of the power under Section 482 Cr.P.C., the High Court is not supposed to go into the merit of the allegation, and, therefore, I am unable to accept the submission of learned counsel for the petitioners that the allegations are false and baseless. Whether the allegations are proved or not will be an issue to be taken up by the trial court at an appropriate stage. Learned counsel for the petitioners have not cited any judgment of the Hon'ble Supreme Court in support of his contention that father-in-law and mother-in-law should be granted relief by way of quashing of summon against them. The submissions are, thus totally misconceived. There are allegation against all the petitioners in this case and by no stretch of imagination the view taken by learned Magistrate at this state can be said to be illegal or irrational.

Having considered the rival submissions,



in view of the discussion hereinabove, this Court is not inclined to interfere with the order taking cognizance in the present case. Accordingly, the application stands dismissed.

So far as the submission of learned counsel for the opposite party no. 2 as regards non-compliance with the order dated 02.07.2014 in Cr. Misc. No. 43855/2013 is concerned, for that his client may take such appropriate steps as may be available to her in accordance with law.

(Rajeev Ranjan Prasad, J.)

Rajeev/-

AFR/NAFR	AFR
CAV DATE	N.A.
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