

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.21932 of 2014

Arising Out of PS.Case No. -41 Year- 2012 Thana -MAHILA P.S. District- MUNGER

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1. Md. Soab @ Md. Soab Alam S/o Md. Musa
2. Md. Arju @ Md. Arju Alam Son of Md. Musa
3. Md. Rustam Son of Md. Musa
4. Md. Sarjan @ Md. Sarjan Alam Son of Md. Musa
5. Bibi Jaitun @ Mumtaz Begum Wife of Md. Musa
6. Md. Musa @ Shaikh Musa Son of Late Abul All resident of Village - Rupauhali,
P.s. - Parbatta, District - Khagaria

.... Petitioner/s

Versus

1. The State of Bihar
2. Reshama Khatoon Daughter of Md. Jabbar Resident of Village - Churamba, P.S.
- Kotwali, District - Munger

.... Opposite Party/s

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Appearance :
For the Petitioner/s : Mr. Anil Kumar Chaudhary, Advocate
For the informant : Mr. Manoj Kumar, Adv.
For the State : Mr. Nawal Kishore Prasad, APP.

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CORAM: HONOURABLE MR. JUSTICE SANJAY PRIYA

ORAL JUDGMENT

Date: 30-01-2018

Heard learned counsel for the petitioners, the
State and learned counsel appearing for opposite party No. 2.

This petition has been filed for quashing the order dated
16-07-2013 passed by Sri Raj Kumar Ravidas, learned Sub Divisional
Judicial Magistrate, Munger in Mahila P.S. Case No. 41 of 2012 by
which and whereunder, the learned Magistrate has after holding
enquiry, found prima facie case for the offence under Sections-
498A/34 of the Indian Penal Code and 3/4 of D.P. Act against the
petitioners.



Counsel for petitioners has submitted that prior to filing of the instant case the father and mother of the complainant has filed Complaint Case No. 948C of 2012 and Mahila P.S. Case No. 34 of 2012. The proceeding against the accused persons in Complaint Case No. 948C of 2012 was quashed by Hon'ble Court by order dated 13-11-2014 passed in Cr. Misc. No. 21387 of 2014. It has been submitted that police submitted final form in Mahila P.S. Case No. 34 of 2012 against the accused persons. On 07-06-2013, the petitioner No. 1 has also filed Matrimonial Case No. 77 of 2013 before Family Court, Khagaria for restitution of conjugal right. The complainant has filed Maintenance Case No. 413M of 2013 before Principal Judge, Family Court, Munger against petitioner No. 1. Counsel for petitioners has submitted that petitioners have never tortured the informant nor made any demand of dowry. The informant (opposite party No. 2) does not want to live with the petitioners and therefore, this false case has been filed to harass the petitioners.

Learned counsel for the State has appeared and submitted that the court below has taken cognizance in the matter after submission of charge sheet by the police on the basis of materials available in the case diary.

The informant has alleged in the written report that she was married with petitioner No. 1 on 11-07-2012 according to



Muslim rites and rituals. She was tortured in Sasural by husband and other family members for demand of dowry and cash of Rs. 2,00,000/- The accused persons assaulted her and she was forced to leave her Sasural.

Counsel for informant (opposite party No. 2) has submitted that earlier matter was sent to Mediation Centre where proposal was made by opposite party No. 2 for one time settlement but the petitioners refused. Counsel for opposite party No. 2 has submitted that the husband is not making any payment of maintenance amount to the informant though she has filed the maintenance case bearing Maintenance Case No. 413M of 2013, which is at present running at the stage of evidence before the Principal Judge, Family Court, Munger against the husband (petitioner No. 1).

From perusal of the allegation made in the written report, this court finds that it is an admitted position that the informant was married with petitioner No. 1 on 11-07-2012. The petitioner No. 1 (husband) is not taking care of the informant on account of which, the informant was compelled to file the instant case as well as Maintenance Case No. 413M of 2013, which is pending. The petitioner No. 1 is not making any payment of maintenance amount also to opposite party No. 2.



In such circumstances, this court does not find any illegality in the impugned order with regard to petitioner No. 1 who is husband of the opposite party No. 2.

Accordingly, this Cr. Misc. petition is dismissed with respect to petitioner No. 1. The court below will proceed in the case in accordance with law against petitioner No. 1 (husband).

So far as petitioner Nos. 2 to 6 are concerned; they are family members of husband of the informant.

In the written report, there is no any specific allegation of overt act against them. There is general and omnibus allegation against them.

It is consistent view of the Hon'ble Supreme Court that continuance of criminal proceeding involving all the family members of husband when F.I.R. does not disclose specific allegation against them will be abuse of the legal and judicial process. In the case reported in *PLJR 2013 (1) SCC 10 (Geeta Mehrotra & Anr. Vs The State of U.P. & Anr.)*, the Hon'ble Supreme Court has held that mere casual reference of names of family members in a matrimonial dispute without any allegation of their active involvement in the offence is not sufficient for taking cognizance, moreso, when tendency is to rope in entire family members in matrimonial disputes; the proceeding, is liable to be quashed.



Therefore, this court is of the view that continuance of criminal proceeding against petitioner Nos. 2 to 6 will be mere harassment to them and an abuse of process of the law.

Accordingly, the impugned order dated 16-07-2013 passed by learned Sub Divisional Judicial Magistrate, Munger in Mahila P.S. Case No. 41 of 2012 along with entire criminal proceeding with regard to petitioner Nos. 2 to 6 is quashed.

This Cr. Misc. Application is accordingly allowed in part.

(Sanjay Priya, J)

A.K.V./-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	07-02-2018
Transmission Date	07-02-2018

