

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.38154 of 2014

Arising Out of PS.Case No. -30 Year- 2002 Thana -PIRBAHOR District- PATNA

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1. Binod Kumar Sinha, Son of Late Sheonandan Prasad resident of House No.- 156
A, Patliputra Colony, P.S.- Patliputra, Town & District- Patna

.... Petitioner/s

Versus

1. The State of Bihar
2. Sangeeta Sinha Wife of Rajiv Kumar Sinha, Daughter of Late Swarn Kumar
resident of Flat No.-B-303, Manju Vatika Apartment, Bailey Road, P.S.- Rupaspur,
District- Patna

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Y.V. Giri, Senior Advocate

Mr. Pankaj, Advocate

Mr. Pranav Kumar, Advocate

For the informant : Mr. P.K. Sinha , Advocate

Mr. Lav Kush Kumar, Advocate

For the State : Mr. S. Dayal, A.P.P.

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CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR

ORAL JUDGMENT

Date: 05-03-2018

Heard learned counsel for the petitioner, learned counsel
for the informant as well as learned A.P.P. for the State.

The petitioner seeks setting aside the order dated
22.02.2010 passed by the learned Sub Divisional Judicial Magistrate,
Patna in connection with Pirbahore P. S. Case No. 399 of 2002,
corresponding to G.R. Case No. 399 of 2002 whereby the learned Sub
Divisional Judicial Magistrate, Patna has framed the charges against
the petitioner under Sections 498A/ 34 of the Indian Penal Code as
well as 3/4 of Dowry Prohibition Act.

Learned counsel for the petitioner submits that the
petitioner is the father –in-law of the informant/ Opposite Party No. 2,



83 years old person and allegation against him is general and omnibus. In the F.I.R., the specific allegation is against the husband of the informant/ Opposite Party No. 2, who is the son of the petitioner, economically independent person being teacher in school and living separately from the petitioner. The informant has alleged that her husband has illicit affair with co-teacher, Sabnam so he wanted to marry with her so he used to torture her. It is also submitted that earlier the elder son of the petitioner, another co-accused moved before this Court for quashing the cognizance order, which was set aside by a Co-ordinate Bench of this Court vide Cr. Misc. No. 29585 of 2014. The allegation against the petitioner and his elder son, Raj Kumar Sinha is similar. Learned counsel for the petitioner has placed reliance on **a decision of the Apex Court passed in the case of Geeta Mehrotra and another Vs. State of Uttar Pradesh and Another reported in (2012) 10 Supreme Court cases 741 and also on a judgment passed in the case of Pritam Ashok Sadaphule Vs. State of Maharastra reported in (2015) 11 Supreme Court cases 769.**

Learned counsel for the petitioner further refers to the agreement entered in between the husband and wife (Opposite Party No. 2) indicating the fact that there was some dispute between them and both settled the dispute at that point of time but again they retreated back to earlier situation. The husband had earlier filed a Divorce Suit against the wife (Opposite Party No. 2) and, therefore



the, present F.I.R. has been instituted. Learned counsel for the petitioner submits that in the backdrop of aforesaid fact continuation of the criminal proceeding against the petitioner would be an abuse of the process of the Court.

Learned counsel appearing on behalf of the informant submits that there is specific allegation against the petitioner, father-in-law of the informant/ Opposite Party No. 2 and a Co-ordinate Bench of this Court while allowing the quashing application of the brother-in-law of the informant/ Opposite Party No. 2, observed that quashing of the criminal proceeding against brother-in-law shall have no bearing on main litigation pending between father-in-law and the husband of the informant/ Opposite Party No. 2.

Against the said order, the informant/ Opposite Party No. 2 preferred Special Leave to Appeal but that was dismissed, which means that observation was also affirmed by the Supreme Court.

Having considered rival submissions of both sides and on personal of the record, the court finds that the case was filed after six years of marriage and besides allegation of torture for realising further dowry another relevant accusation leveled by wife against her husband is act of perpetual torture because of his illicit affair with his colleague.

So far as the allegation of demand of dowry is concerned, there is a general and omnibus allegation against all accused persons. It is alleged that in the year, 1998 demand of refrigerator was made



and after six years of marriage, the husband, brother-in-law and father –in-law (petitioner) of the informant./ Opposite Party No. 2 have been making demand of Rs. Five lacs.

So far as the allegation of committing cruelty is concerned, there is no any specific allegation against the petitioner. The general and similar allegation has been leveled in the F.I.R. against the petitioner and Rajiv Kumar Sinha, brother-in-law of the informant. Except the degree of relationship, there is no other difference and case of both are on similar footing. The complainant's husband is not economically or otherwise dependent on his father.

The material on record indicates that the petitioner was living separately from the husband of the informant for the last four-five years and the main grievance of the informant is that she was neglected and tortured by her husband as he developed amorous relationship with his colleague, a teacher in the same school. There is absence of any specific overt act against the petitioner and this Court does not find any distinction in the allegation between Rajiv Kumar Sinha and this petitioner.

Annexure-2, a subsequent agreement, after lodging of the present case, between the husband and wife, also indicates the difference between the husband and wife. The petitioner, who is at present 81 years of age, at relevant point of time was living separately from the husband of the informant in another locality. The ratio in the case of **Geeta Mehrotra and another Vs. State of Uttar**



Pradesh (Supra) also applies in case of the petitioner because the allegation is not specific against the petitioner only is general and omnibus allegation against him. Moreover, at the relevant point of time, he was not residing with the husband of the informant. It is general tendency to implicate the family members of the husband, even though, they live separately and having no interference in their day to day matrimonial life. The Court finds no sufficient material in the case diary to frame charges against the father-in-law, the petitioner of this application, as such, continuance of the criminal proceeding against the petitioner would be an abuse of the process of the Court, hence, the impugned order dated 22.02.2010, framing of the charge against the petitioner as well as the subsequent criminal proceeding against him is hereby quashed.

The application stands allowed.

(Arun Kumar, J)

Sudha/-

AFR/NAFR	AFR
CAV DATE	N/A
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