

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.51953 of 2017

Arising Out of PS.Case No. -58 Year- 2016 Thana -MAHILA P.S. District- PATNA

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Apurv Mohan @ Mannu son of Sri Shyam Mohan, Resident of Qrs. No. 2019,
Sector-IV C, P.S.-Sector 1V, Bokaro Steel City, District- Bokaro, State of
Jharkhand.

.... Petitioner/s

Versus

1.State of Bihar

2. Shaili Gautam @ Shaili Mohan, daughter of Dr. D.N.Gautam, West Bailey Road,
North Rupaspur Over Bridge, near Ishan International Girls School, New Bailey
Road, P.S.-Rupaspur, District- Patna - 801503

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Jitendra Singh, Sr. Advocate
: Mr. Akashdeep, Advocate
For the Opposite Party No.2 : Mr. Jaishankar Pathak, Advocate
For the State : Mr. Pramod Kumar Pandey, APP

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
ORAL JUDGMENT

Date: 08-01-2018

This application under Section 482 of the Code of Criminal Procedure (for short 'the Cr.P.C.') has been filed for quashing the entire criminal proceedings against the petitioner arising out of Mahila P.S. Case No.58 of 2016 dated 10.09.2016 along with the order of cognizance dated 02.12.2016.

2. Heard Mr. Jitendra Singh, learned senior counsel for the petitioner, Mr. Jaishankar Pathak, learned counsel for the opposite party no.2 and Mr. Pramod Kumar Pathak, learned counsel for the State and perused the record.

3. The prosecution story, as narrated in the written



information of respondent no.2 dated 10.09.2016, is that respondent no.2 was married to the petitioner on 17.04.2009 and on 07.05.2009 they went to Mumbai where the petitioner had been working with H.S.B.C, Bank. She also got herself transferred from Patna to Mumbai. It has been alleged that she was subjected to cruelty since May, 2009 itself and when a female friend of the petitioner, Hemali, came to visit, petitioner misbehaved with respondent no.2 in her presence, went out with her and came back after spending sufficient time and again abused respondent no.2 and pressurized her for divorce. It has also been alleged that petitioner used to spend most of his time chatting to another female friend Martie Taljaard of South Africa by ignoring respondent no.2 and had several inappropriate pictures of said Martie Taljaard in his Laptop.

4. It has further been stated that in the year 2015, when she was staying at Vaishali (Ghaziabad), the petitioner used to talk to Shweta, wife of his cousin, by ignoring respondent no.2 and used to praise her in front of respondent no.2 and in the year 2016, after respondent no.2 left Ghaziabad, another lady came as a guest. It has also been stated that after respondent no.2 left Bokaro, the same lady was welcomed at Bokaro where she stayed for 4-5 days and the petitioner specially came to Bokaro to take care of her. It has been alleged that such behavior was core personality of the petitioner.



5. It has been alleged that in February, 2010, during marriage of her brother, the petitioner verbally abused her after calling her in a room and whenever they came to Patna, he would verbally and physically abuse her with threats of breaking the relationship if she said anything to anyone. It has also been alleged that on insistence of the petitioner, her father had given rupees one lac for setting up the matrimonial home of respondent no.2 and she used to pay for household expenses as the petitioner never gave any money. It has also been alleged that on 22.5.2009, when mother of respondent no.2 had come to Mumbai, she had established the matrimonial home of respondent no.2 from her own expenses and respondent no.2 was made to work even in her illness. It has also been stated that in course of employment of the petitioner, they shifted to Delhi-Ghaziabad in June, 2010 where in October, 2010, she became pregnant and on request, she was got examined by a Doctor. After coming back, the petitioner pressurized her for divorce which resulted in quarrel and she was assaulted, thrown to ground and was kicked in stomach by the petitioner due to which next day she suffered stomach ache and bleeding but the petitioner kept on laughing in presence of his sister. They took her to hospital at midnight and got her discharged against the advice of the doctor. It has been alleged that after 3 days, her dead child aborted and despite request, she was not taken to doctor.



Subsequently, when she came to Patna, she got herself examined.

6. It has been stated that in the month of December, 2010, the petitioner and his mother started verbally abusing and insulting her. It has been further alleged that the petitioner's mother tried to push her off Balcony, but she could somehow save herself. Immediately after this the petitioner sent an e-mail to her brother on 23.12.2010 which discloses the criminal intent of the petitioner and his mother. It has further been stated that in the year 2011, the petitioner asked for rupees two lacs from her and when she showed her inability, she was asked to get it from her father or leave the house. When she informed her father, her father requested Dr.Akhilesh Tiwary who transferred rupees three lacs from his account in the account of her husband. However, her husband refunded rupees two lacs to Professor Tiwary, but after that the degree of torture and cruelty on her increased. It has been alleged that on pressure of her husband and his mother, she terminated her Insurance Policy and deposited rupees one lac in the SBI account as demanded by her mother-in-law.

7. It has been stated that when the mistreatment did not stop, Professor Akhilesh Tiwary, who was a family friend and stayed in Greater Noida, took her and her husband with his family to shimla on his own expense so that there could be change in the behavior of



her husband but in Shimla also, the petitioner abused and physically assaulted her. It has been alleged that between 2009-2011, the mother-in-law of respondent no.2, took all her Stridhan, valued at about rupees ten lacs, by intimidating her. It has been stated that during her stay at Bokaro, in the year 2014, the petitioner and his mother compelled respondent no.2 to massage the leg of Mr. Muralidharan, a male friend of her mother-in-law and in the month of December, 2015, the petitioner in-fact told her that she would have to anyhow keep said Muralidharan and Praval Sharma, cousin of the petitioner, happy. It has also been stated that in the month of November, 2015, the cousin of the petitioner, who was working on the post of ACIO-II, Delhi Airport, started living with them at the behest of the petitioner and his mother and in the month of December, 2015, due to the sudden death of mother of said cousin brother went to Varanasi with his wife Shweta. On 30.12.2015, said Praval Sharma came back alone and forcibly entered the room of respondent no.2 and started keeping his belongings. On objection, he started fighting with respondent no.2 and the petitioner not only took his side but also abused and assaulted respondent no.2 and took away the mobile of respondent no.2 so that she may not contact Police or her family for help.

8. It has also been stated that in the month of September, 2015, father of respondent no.2 was hospitalized but she was not



allowed to visit him. It has been stated that the petitioner is strong, short tempered, aggressive, loud and unpredictable in his behavior and therefore, she could not protest against him. It has also been alleged that the petitioner continuously pressurized her to sever all relations with her father and family in which his mother also used to encourage. It has been stated that she last talked to the petitioner on 30.7.2016 in which he abused her. It has been alleged that under garb of looking after the house, the petitioner always compelled her to leave her job. It has also been alleged that since May, 2016, the petitioner has not paid any money to her and she has been staying at her father's residence. It has further been alleged that in the month of June-July, 2016, the petitioner joined in Kotak Mahindra at Mumbai but at the time of joining, he disclosed his marital status as "Single" and left the column relating to Date of Marriage and dependents blank. It has lastly been stated that she tolerated all the abuses and torture just to save her marriage and only when the petitioner disclosed his status as single, she did not have any option but to file a criminal case against the petitioner and his relatives.

9. From perusal of the FIR it would be manifest that the allegations made therein do attract ingredients of cognizable offences under the Indian Penal Code (for short 'the I.P.C.') and the Dowry Prohibition Act.



10. On completion of investigation, the police submitted charge-sheet against the petitioner and others as during investigation the witnesses supported the allegations made in the FIR.

11. On perusal of the FIR, statement of the witnesses recorded under Section 161(3) of the Cr.P.C. and brief facts of the case narrated in the charge-sheet dated 28.11.2016, the learned Sub Divisional Judicial Magistrate, Patna took cognizance of the offences punishable under Sections 498A, 420, 313 and 307 read with Section 34 of the I.P.C. and Sections 3 and 4 of the Dowry Prohibition Act vide order dated 02.12.2016.

12. As Section 307 of the I.P.C. is triable by the Court of Session, vide order dated 13.04.2017, the learned Magistrate committed the case to the Court of Session for trial and the matter is pending for framing of charge.

13. It is submitted by learned senior counsel for the petitioner that though several instances of physical abuse have been alleged, no supporting material in form of medical report or complaint could be brought to the notice of the investigating officer in course of investigation of the case. According to him, the instances complained of are of the year 2009, 2010 and 2011, but no complaint was made to the police in time. He submitted that there is complete lack of material to support the allegations made under Sections 307 and 313 of the



Cr.P.C. He contended that the learned Magistrate while taking cognizance of the offences failed to appreciate that the criminal prosecution through the FIR in question is an after thought, as the same was filed after delay of 6-7 years. Lastly, he contended that the order taking cognizance and the commitment of the case has been passed in a mechanical manner without application of judicial mind by the court below and, thus, the same is fit to be set aside.

14. On the other hand, learned counsel for the State and learned counsel for the informant submitted that the informant being the wife of the petitioner tried her level best to save the marriage, but when the acts of cruelty did not stop and the petitioner abandoned the informant after mercilessly assaulting her, the informant was left with no other option but to lodge a police complaint. They submitted that looking at the allegations made in the FIR, which were duly supported by the witnesses during investigation, it cannot be said that the ingredients of the offences under Sections 307 and 313 of the I.P.C. are not attracted.

15. I have heard learned counsel for the parties and perused the record.

16. I find substance in the submissions made by the learned counsel for the State and learned counsel for the informant.

17. The allegations made in the FIR do attract ingredients



of cognizance offences. The witnesses examined during course of investigation have supported the allegations made in the FIR and the police have found the allegations to be true. In that view of the matter, no fault can be found with the order passed by the learned Magistrate whereby cognizance of the offences has been taken and the petitioner has been summoned to face trial. Whether a particular provision of the penal law is attracted or not is to be seen by the court at the stage of framing of charge and even if an offence under a particular provision of law may not be made out, for that reason, the order taking cognizance of the offence cannot be held to be bad.

18. The application, being devoid of any merit, is dismissed.

(Ashwani Kumar Singh, J)

Md.S./-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	12.01.2018
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