

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.57681 of 2015

Arising Out of PS.Case No. -37 Year- 2015 Thana -PAROO District- MUZAFFARPUR

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1. Brijesh Das @ Brijesh Kumar Das son of Harichandra Das
 2. Rajesh Das son of Harichandra Das
 3. Pappu Das son of Harichandra Das
 4. Harichandra Das son of Late Janak Das
 5. Urmila Devi wife of Harichandra Das
 6. Poonam Devi wife of Rajesh Das

All resident of village- Chainpura, Chewtaha, Police Station- Paroo,
District- Muzaffarpur.

.... Petitioner/s

Versus

1. The State of Bihar
2. Pratima Devi wife of Brajesh Das daughter of Ram Sanjeevan Das at present
resident of village- Neknampur, Police Station- Deoria, District- Muzaffarpur.

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Udit Narayan Singh, Advocate
: Mr. Gajendra Kumar Singh, Advocate
For the State : Mr. Pramod Kumar Pandey, APP
For the Opposite Party No.2. : Mr. Anish Kumar, Advocate

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 21-03-2018

Heard Mr. Udit Narayan Singh, learned counsel for the
petitioners, Mr. Anish Kumar, learned counsel for opposite party no.2
and Mr. Pramod Kumar Pandey, learned counsel for the State.

2. This application under Section 482 of the Code of
Criminal Procedure(for short 'the Cr.P.C.') has been filed by the
petitioners for quashing the order dated 01.11.2015/02.11.2015 passed
by the learned Sub Divisional Judicial Magistrate, (West),
Muzaffarpur, in Paroo P.S. Case No.37 of 2015 corresponding to G.R.



No.301 of 2015, Trial No.3990 of 2015 by which he has taken cognizance of the offences punishable under Sections 498A of the Indian Penal Code (for short 'the IPC') and Sections 3 and 4 of the Dowry Prohibition Act (for short 'the D.P.Act') and summoned the petitioners to face trial.

3. It is submitted by the learned counsel for the petitioners that initially a complaint was filed which was referred to the police under Section 156(3) of the Cr.P.C. pursuant to which an FIR was instituted against the petitioners under Section 498A of the IPC and Sections 3 and 4 of the D.P.Act. He submitted that so far as petitioner nos.2 to 6 are concerned, they are in laws and there is no specific allegation against them either in the FIR or in the case diary. On completion of investigation in the report submitted under Section 173(2) of the Cr.P.C. the petitioner nos.2, 3 and 6, namely, Rajesh Das, Pappu Das and Poonam Devi respectively were found innocent and charge-sheet was submitted only against petitioner nos.1, 4 and 5, namely, Brijesh Das, Harichandra Das and Urmila Devi respectively. He submitted that though there is no material to put the petitioner nos. 2 to 6 on trial, the learned Magistrate not only summoned the charge-sheeted accused but also the accused against whom the investigating officer had submitted final report. He contended that the tendency to implicate all the close and distant relatives in a case under Section



498A of the Cr.P.C. has been taken noticed by the Supreme Court in various decisions and the Supreme Court has held that the courts have to be cautious in a case where there is matrimonial dispute at the time of summoning an accused.

4. Per contra, learned counsel appearing for the State submitted that the informant and the witnesses examined in course of investigation have supported the allegations made in the complaint. He submitted that it is true that there is omnibus and general allegation against all the accused but only because of that the summoning order cannot be held to be bad. He contended that at the stage of cognizance prima facie case is to be looked into and if a prima facie case is made out against the accused to the satisfaction of the learned Magistrate, no illegality can be found with the order.

5. Learned counsel appearing for the informant opposite party no.2 has also supported the contention advanced on behalf of the State. He submitted that there is allegation in the FIR that the informant was subjected to cruelty for non-fulfillment of demand of dowry not only by the husband but also by her in-laws and in that view of the matter the impugned order passed by the learned Sub Divisional Judicial Magistrate (West), Muzaffarpur does not suffer from any illegality.

6. I have heard learned counsel for the parties and perused



the case diary summoned in the case.

7. The prosecution case, in short, is that marriage of petitioner no.1 was solemnized with opposite party no.2 on 06.07.2013. Her father gifted several articles at the time of marriage including cash amounting to rupees eighty thousand. At the time of '*Bidai*' the petitioner no.1 demanded a motorcycle and declined to take the opposite party no.2 to her matrimonial home till the demand of motorcycle is fulfilled. However, after persuasion, he agreed for '*Bidai*' and took opposite party no.2 to her matrimonial home. Thereafter, her husband and in-laws started putting pressure for the said demand upon the opposite party no.2. A Panchayti was held in this regard, but the accused persons were not persuaded and did not act according to the advice of Panches and continued to insist on the demand of motorcycle. Lastly, on 13.09.2015 the accused persons ousted the opposite party no.2 from her matrimonial home after retaining her ornaments.

8. From perusal of paragraph 4 of the case diary, it would be manifest that in her subsequent statement, the informant has made specific allegation against her husband in respect of making demand of motorcycle and subjecting her to cruelty. She has not whispered that other relatives assaulted her in her matrimonial home. In paragraph nos. 12 and 13, the independent witnesses, namely, Shail



Kumari Devi and Kameshwar Mahto have clearly stated that it is wrong to allege that relatives of the husband ever subjected the victim to cruelty for non-fulfillment of demand of dowry. They have stated that they are not aware of any such demand or torture. They have stated that the victim left the matrimonial home after living there for a few months. Though, there is specific allegation against the husband of opposite party no.2, namely, Brijesh Das @ Brijesh Kumar Das (petitioner no.1) in the statements of the witnesses recorded in course of investigation, no specific allegation has been made against the petitioner nos.2 to 6. The allegations made, if any, against the petitioner nos.2 to 6 are vague and omnibus. In order to prosecute the relatives of the husband, there has to be some specific allegation against them. A general, vague and omnibus allegation made against the relatives of the husband would not be sufficient to put them on trial in a case under Section 498A of the IPC or Sections 3 and 4 of the D.P.Act.

9. In the cases of Geeta Mehrotra and Another vs. State of U.P. and Another, [(2012) 10 SCC 741) and Preeti Gupta and Another vs. State of Jharkhand and Another,[(2010) 7 SCC 667], the Supreme Court has held that there should be a clear allegation against relatives of the husband and vague and omnibus allegation would not be sufficient to compel them to undergo agony of the trial.



11. In Monju Roy and Others vs. State of West Bengal, [(2015)13 SCC 693], the Supreme Court observed:

“While we do not find any ground to interfere with the view taken by the courts below that the deceased was subjected to harassment on account of non-fulfillment of dowry demand, we do not find any merit in the submission that possibility of naming all the family members by way of exaggeration is not ruled out.”

12. In Kans Raj vs. State of Punjab, [(2000) 5 SCC 207], the Supreme Court observed:

“.... A tendency has, however, developed for roping in all relations of the in-laws of the deceased wives in the matters of dowry deaths which, if not discouraged, is likely to affect the case of the prosecution even against the real culprits. In their over enthusiasm and anxiety to seek conviction for maximum people, the parents of the deceased have been found to be making efforts for involving other relations which ultimately weaken the case of the prosecution even against the real accused as appears to have happened in the instant case”.

12. Though the aforesaid two cases relate to the offence under Section 304B of the IPC, the observations made therein would



also be relevant in the cases falling under Section 498A of the IPC.

13. In Arnesh Kumar vs. State of Bihar and Anr. [(2014) 8 SCC 273], the Supreme Court has observed:

“There is a phenomenal increase in matrimonial disputes in recent years. The institution of marriage is greatly revered in this country. Section 498-A IPC was introduced with avowed object to combat the menace of harassment to a woman at the hands of her husband and his relatives. The fact that Section 498-A IPC is a cognizable and non-bailable offence has lent it a dubious place of pride amongst the provisions that are used as weapons rather than shield by disgruntled wives. The simplest way to harass is to get the husband and his relatives arrested under this provision. In a quite number of cases, bed-ridden grand-fathers and grand-mothers of the husbands, their sisters living abroad for decades are arrested”.

14. In Arnesh Kumar (supra), the Supreme Court has cautioned the courts with regard to proceeding against in-laws and distant relatives of the husband of the wife involved in the offence under Section 498A of the IPC and other relevant offences.

15. In Neelu Chopra and Another vs. Bharti [AIR 2009 SC (supp.) 2950] the Supreme Court observed:



“It does not show as to which accused has committed what offence and what is the exact role played by these appellants in the commission of offence. There could be said something against Rajesh, as the allegations are made against him more precisely but he is no more and has already expired. Under such circumstances, it would be an abuse of process of law to allow the prosecution to continue against the aged parents of Rajesh, the present appellants herein on the basis of vague and general complaint which is silent about the precise acts of the appellants”.

16. It would be manifest from the aforesaid judgments that the Supreme Court has repeatedly expressed its concern with regard to false implication of relatives of husband in cases under Section 498A of the IPC and other related offences. The Supreme Court has also taken judicial notice of the fact that there is a growing tendency of even implication in cases of matrimonial dispute.

17. Looking to the facts of the present case, from any angle, the summoning order as far as petitioner nos.2 to 6 are concerned, on the basis of omnibus, vague and general allegation, cannot be sustained. Allowing the prosecution to continue against them would amount to an abuse of process of the court.

18. Accordingly, the impugned order dated 01.11.2015/



02.11.2015 passed by the learned Sub Divisional Judicial Magistrate (West), Muzaffarpur in Paroo P.S. Case No.37 of 2015 so far as petitioner nos.2 to 6 are concerned is set aside.

19. So far as petitioner no.1 is concerned, there is specific allegation against him that he demanded motorcycle and subjected the victim to cruelty for non-fulfillment of demand of dowry and, hence, his summoning order cannot be said to be bad in law. In that view of the matter, the application, as far as petitioner no.1 is concerned, is dismissed.

20. Consequently, the application is allowed as far as petitioners no.2 to 6 are concerned and is dismissed as far as petitioner no.1 is concerned.

(Ashwani Kumar Singh, J)

Md.S./-

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