

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.20164 of 2015

Arising Out of PS.Case No. -478 Year- 2008 Thana -SAMASTIPUR COMPLAINT CASE District-
SAMASTIPUR

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1. Deo Kant Jha, Son of Late Ram Krishna Jha
 2. Naresh Devi, wife of Deo Kanti Jha
 3. Arti Kumari, D/o Deo Kant Jha
 4. Uma Shankar Jha, Son of Deo Kant Jha
 5. Shiv Shankar Jha, Son of Deo Kant Jha
 6. Punam Devi, wife of Navin Jha
 7. Chandra Shekhar Jha, Son of Late Ram Krishna Jha
 8. Anju Devi wife of Binod Kumar Jha
- All are resident of village - Boraj, P.S. Hathauri, District - Samastipur

.... Petitioner/s

Versus

1. The State of Bihar
2. Suman Devi, Wife of Binod Kumar Jha, resident of village - Boraj, P.S. Hathauri, District - Samastipur

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Ashok Kumar Mishra, Advocate.
For the Opposite Party/s : Mr. Bharat Bhushan, A.P.P

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CORAM: HONOURABLE MR. JUSTICE SANJAY PRIYA

ORAL JUDGMENT

Date: 09-02-2018

1. This application under Section 482 of the Code of Criminal Procedure has been filed for quashing the order dated 09.02.2015/05.12.2014 passed by the learned Judicial Magistrate, 1st Class, Rosera, Samastipur, in Complaint Case No. 478 of 2008 corresponding to Trial No. 185 of 2015 by which the learned Magistrate has rejected the discharge petition filed by the petitioners without taking into consideration the order dated 7.5.2012 passed by this Hon'ble Court in Cr. Misc. 37550 of 2008 preferred by the petitioners challenging the order of cognizance, which was dismissed



but liberty was granted to raise defence at the appropriate stage in the trial court.

2. The allegation against accused persons in the complaint petition is that complainant was married with Binod Kumar Jha in the year 1985 according to Hindu rites and rituals. She was tortured in her sasural by father-in-law (petitioner No. 7) and cousin father-in-law as well as his wife (petitioner No. 1 and 2) to bring cash of Rs.75,000/- from her parents. The accused persons committed physical and mental torture with her for non-fulfillment of aforesaid demand. The husband of the complainant is working outside state in a private company. As such, she was unprotected in her matrimonial house. The father-in-law (petitioner No. 7) tried to establish illicit relation with her but she declined to do so. The complainant reported the matter to her husband when he came to the village and made protest concerning conduct and demand of the accused persons, as a result of which, she was assaulted by the accused persons. Since there was danger of life of the complainant, she was taken by her husband to the place of his service at Delhi. But as and when she came to matrimonial house along with her husband, the said demand was always made by the accused persons with the opposite party No. 2. The father of the opposite party No. 2 tried to pacify the matter but he was also ousted from the house of the accused persons. The complainant has further stated that she has got a son aged about 3



years out of the said wedlock. It is also alleged that on 10.6.2008 at about 4:00 p.m. in the evening when her husband was out of station, the accused persons made attempt to commit murder of her but on arrival of persons of the locality, she could be saved. Thereafter, she was ousted from the matrimonial house. The accused persons kept all her belongings. The complainant has further alleged that father-in-law (petitioner No. 7) has got illicit relationship with petitioner No. 8, Anju Devi and she lives with him as a kept.

3. Heard learned counsel for the petitioners and learned counsel for the State.

4. Learned counsel for the petitioners has submitted that petitioner No. 1 is cousin father-in-law of the complainant and petitioner No. 2 to 6 are family members of petitioner No. 1. They have no concern with the family affairs of the complainant and her husband Binod Kumar Jha. It has further been submitted that petitioner No. 8 has claimed herself to be second wife of husband of the complainant. The petitioner No. 7 is father-in-law of the complainant.

5. Learned counsel for the petitioner has referred to Annexure-2 which is complaint petition filed by petitioner No. 8 against the complainant and her husband as well as other accused persons alleging that she is second wife of the husband of the complainant. The husband of the complainant performed marriage



with her after concealing the fact that he is already married with the complainant. She was tortured by both i.e. the complainant and her husband.

6. The aforesaid case was lodged by petitioner No. 8 against the complainant and her husband vide Hathouri P.S. Case No.39 of 2008 filed under Section 498(A), 323 and 504 of the Indian Penal Code. The case was registered in the police station on 15.6.2008 on the basis of aforesaid written report.

7. It is alleged that after lodging of the aforesaid case by petitioner No. 8 the instant complaint case has been filed against these petitioners on 17.6.2008 levelling allegation against them as mentioned above in detail.

8. Learned counsel for the opposite party No. 2 has appeared and submitted that petitioner No. 8 in fact is not the wife of husband of the complainant. She has illicit relationship with the father-in-law of the complainant which was opposed by the complainant, for which, she was tortured and ultimately ousted from the matrimonial house.

9. Learned counsel for the petitioner has submitted that police after investigation found the case filed by the petitioner No. 8 against the husband and complainant to be true and submitted charge sheet against them. The learned Magistrate on the basis of charge sheet submitted by the police, took cognizance against the



husband and complainant of the instant case for the offence under Section 498-A of the Indian Penal Code.

10. In this manner, from submission made on behalf of the parties and allegation made in the complaint petition, it is apparent that petitioner Nos. 1 to 6 are not directly related with the husband of the complainant. Petitioner No. 1 is cousin father-in-law i.e. uncle of the husband of the complainant. The petitioner Nos. 2 to 6 are family members of petitioner No. 1. The case has been filed by petitioner No. 8 against the complainant and her husband which is also pending in the Court in which petitioner No. 8 has claimed herself to be the second wife of husband of the complainant.

11. Therefore, the main dispute is between the complainant and petitioner Nos. 7 and 8. The petitioner Nos. 1 to 6 have no concern with family affairs of the complainant and her husband.

12. Therefore, continuance of Criminal Proceeding against petitioner Nos. 1 to 6 will be merely harassment to them and abuse of process of law.

13. Accordingly, the impugned order dated 09.02.2015/05.12.2014 passed against petitioner Nos. 1 to 6 by the learned Judicial Magistrate, 1st Class, Rosera, Samastipur, in Complaint Case No. 478 of 2008 corresponding to Trial No. 185 of 2015 is hereby quashed.



14. This Criminal Miscellaneous application against petitioner No. 1 to 6 is allowed.

15. So far impugned order with regard to petitioner Nos. 7 and 8 are concerned, the dispute can only be properly adjudicated after holding trial. The court below is directed to frame charge against both the petitioners on the basis of evidence available before him.

16. Therefore, this Court does not want to interfere with the impugned order with regard to petitioner Nos. 7 and 8. The court below will proceed in the trial in accordance with law with regard to petitioner Nos. 7 and 8.

17. The interim stay granted to the petitioner No. 7 and 8 passed by a coordinate Bench of this Court vide order dated 15.05.2015 is hereby vacated.

18. This Criminal Miscellaneous application is accordingly partly allowed.

(Sanjay Priya, J)

S.Ali/-

AFR/NAFR	AFR
CAV DATE	N.A
Uploading Date	15/02/2018
Transmission Date	15/02/2018

