

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.4098 of 2016

Arising Out of PS.Case No. -1891 Year- 2015 Thana -VAISALI COMPLAINT CASE District -
VAISHALI(HAJIPUR)

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1. Smt. Radha Devi wife of Raj Kishore Jaiswal,
2. Raj Kishore Jaiswal, son of Late Kant Lal Bhagat,
Both are residents of Mohalla - Adars Nagar, Gangjala, Ward
No. 17, Police Station and District - Saharsa
3. Nisha Bhagat, wife of Uday Narayan Bhagat,
4. Uday Narayan Bhagat, son of Late Ramdeo Bhagat,
5. Sakshi Bhagat @ Mona @ Sakshi Kumari daughter of Uday Narayan
Bhagat,
All three are residents of Daiyung Township, Police Station-
Daiyung Township, District - Changlang (Arunachal Pradesh)
6. Jyoti Bhagat @ Babli wife of Shyam Nandan Singh, daughter of Uday
Narayan Bhagat, C/o Tapan Mandal, resident of Solungary Colony, Police
Station - New Town, District North 24 Paragana (New Town) Kolkata
(West Bengal)
7. Reena Jaiswal, wife of Alok Kumar, resident of Mohalla - Harda, Police
Station - K. Hatt., District - Purnea.

.... Petitioner/s

Versus

1. The State of Bihar.
2. Anju Jaiswal, daughter of Gajendra Chaudhary, resident of village - Berai,
Police Station - Sarai, District - Vaishali.

.... Opposite Party/s

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Appearance :

For the Petitioner/s	:	Mr. Sandeep Kumar, Advocate
	:	Mr. Shailendra Kumar Singh, Advocate
For the State	:	Mr. Jharkhandi Upadhyay, APP

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 09-07-2018

Heard learned counsel for the petitioners and learned
counsel for the State. Though the complainant is being represented
through Mr. Ramesh Kumar Thakur, learned Advocate, he has chosen
not to appear despite repeated calls.

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 31.08.2015 passed by the learned Judicial Magistrate, 1st Class, Vaishali at Hajipur in connection with Complaint Case No.1891 of 2015 whereby and whereunder the learned Magistrate has summoned the petitioners to face trial for the offence punishable under Section 498A of the Indian Penal Code (for short 'the I.P.C.').

3. It has been brought to the notice of the Court that, during the pendency of this application, petitioner no.2 Raj Kishore Jaiswal has died. In that view of the matter, this application as far as petitioner no.2 is concerned is disposed of as infructuous.

4. It is submitted by Mr. Sandeep Kumar, learned counsel for the petitioners, that the petitioners are relatives of husband of opposite party no.2 (hereinafter referred to as 'the complainant'). In her statement made on oath, the complainant has not uttered a word against them. The inquiry witnesses, in course of enquiry conducted under Section 202 of the Cr.P.C. also failed to give any specific instance of cruelty meted out to the complainant at the hands of the petitioners. It is further submitted that the complaint has been filed by the complainant due to matrimonial discord and incompatibility between the husband and wife. The husband of the complainant had instituted a matrimonial case much prior to the institution of the



complaint seeking decree of divorce and after receipt of the notice in the said matrimonial case the instant complaint has been filed.

5. Learned counsel appearing for the State submitted that though, in the statement made on oath, the complainant has not made any specific allegation against the petitioners, from perusal of the complaint, it would transpire that the complainant was being subjected to cruelty by all the family members. He submitted that enquiry witness no.3 Sudhir Kumar Sah has specifically stated in course of enquiry that all accused persons including these petitioners also harassed the complainant.

6. I have heard learned counsel for the petitioners, learned counsel for the State and carefully perused the record.

7. In the complaint petition, which was filed on 05.06.2015, the complainant has alleged that she was married to Amit Jaiswal on 27.06.2004. Since then she was living in her Sasural. Her husband started demanding rupees two lacs for starting business from her father. His other relatives also started demanding the amount of money. When she refused to ask for money from her parents looking at their poor financial condition, they started to subject her to cruelty. Subsequently, she was blessed with a baby out of the wedlock. Thereafter, they started putting pressure upon her to demand rupees two lacs so that the same may be deposited in the name of her



daughter. Since she did not yield to their demand, they started harassing her. Later on, she learnt that her husband was having affair with another girl at Delhi where he worked and in order to marry her he was humiliating and harassing her. Ultimately, she was driven out of her matrimonial house on 25.01.2013 after retaining all her personal belongings. They also tried to snatch the baby from her. She was still thinking that the problem would be sorted out in due course of time, but in the meantime she received summons from the Court of Principal Judge, Family Court, Saharsa from which she came to know that her husband had filed an application for a decree of divorce. She has stated in the complaint that she has already appeared in the matrimonial case on 27.03.2015.

8. In her statement, the complainant has stated that when her father came to her Sasural he was not allowed to meet her and, thereafter, she was being subjected to cruelty. It is further alleged that her husband also used to beat her frequently.

9. I further find that, in course of enquiry conducted under Section 204 of the Cr.P.C., three witnesses, namely, Gajendra Choudhary, Shivji Choudhary and Sudhir Kumar Sah were examined. Enquiry Witness No.1 Gajendra Choudhary, father of the complainant, in his statement, disclosed that marriage was performed on 27.06.2004 with Amit Jaiswal and, at the time of marriage, he had



spent money as per his capacity. Subsequently, rupees one-two lacs was demanded for business and, on failure to meet demand, Amit Jaiswal used to abuse and harass the complainant and ultimately he kicked her out of her matrimonial home on 25.01.2013 and since then she is living with him. Enquiry Witness Nos. 2 and 3, namely, Shivji Choudhary and Sudhir Kumar Sah, uncle and brother of the complainant respectively have also made identical allegations in their statements. They have also stated that father-in-law, mother-in-law, *Nanad* and *Nandos* also abused the complainant and ousted her from her matrimonial home on 25.01.2013.

10. I find that neither the complainant nor her father has made any specific allegation against the petitioners in their statements made before the court. I also find that though some vague and omnibus allegations have been made by enquiry witness nos.2 and 3 against the petitioners also, but the same has to be considered in the light of the fact that prior to the institution of the complaint, the husband of the complainant had already instituted matrimonial case no.30 of 2012 in the Court of Principal Judge, Family Court, Saharsa seeking a decree of divorce on the ground of cruelty on 28.02.2012 in which notices were issued to the complainant and admittedly only after receiving the notice, the instant complaint was filed in the year, 2015.



11. Petitioner no.1 happens to be mother-in-law, petitioner no.3 is married *Nanad*, petitioner no.4 is husband of petitioner no.3, petitioner nos. 5 and 6 are daughters of petitioner nos.3 and 4 and petitioner no.7 is also a married *Nanad*. Petitioner nos.3 to 5 are residents of Daiyung Township, in the District of Changlang, Arunachal Pradesh whereas petitioner no.6 is residing at Kolkata, West Bengal and petitioner no.7 is residing at Purnea. The matrimonial home of the complainant is at Saharsa where the alleged act of cruelty upon the complainant was made.

12. The two enquiry witnesses, who have vaguely stated about harassment to the complainant by the petitioners also have not stated exactly what role was played by them in the commission of the offences. Keeping the totality of the circumstances and keeping in mind several judgments of the Supreme Court highlighting rising trend of implicating the distant relative of husband in cases under Section 498A of the I.P.C., in the opinion of this Court, at best, the learned Magistrate could have summoned the husband of the complainant for trial under Section 498A of the I.P.C.

13. In that view of the matter, it would be an abuse of process of law to allow the prosecution to continue against these petitioners.

14. Accordingly, the impugned order dated 31.08.2015



passed by the learned Judicial Magistrate, 1st Class, Vaishali at Hajipur in Complaint Case No.1891 of 2015 so far as petitioners no.1 and 3 to 7 are concerned is hereby quashed. The learned Magistrate shall proceed against the accused Amit Kumar Jaiswal in the instant case in accordance with law.

(Ashwani Kumar Singh, J)

Md.S./-

AFR/NAFR	NAFR
CAV DATE	N.A.
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