

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.29797 of 2016

Arising Out of PS. Case No.-122 Year-2015 Thana- BABUBARHI District- Madhubani

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1. Md. Sadare Alam, Son of Md. Subhan. null
 2. Khateeza Khatoon, Wife of Md. Subhan.
 3. Md. Subhan, son of Gaffur Momin.
 4. Md. Minhaz, son of Md. Subhan.
 5. Md. Minnat, son of Md. Saleem, All Resident of Village- Chaurahi, P.S.- Babubarhi, District- Madhubani.
 6. Md. Zakir, son of Gafoor, Resident of Village- Khagwani, P.S- Babubarhi, District- Madhubani.

... .. Petitioner/s

Versus

1. The State of Bihar.
2. Sabana Khatoon, daughter of Molvi Murtaza, resident of village- Chhaurahi, P.S.-Babubarhi, District- Madhubani.

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Shailendra Kumar Jha, Advocate
For the Opposite Party/s : Mr. Arbind Kumar Pandey, APP

CORAM: HONOURABLE MR. JUSTICE SANJAY PRIYA

ORAL JUDGMENT

Date : 28-08-2018

Heard learned counsel for the petitioners, learned counsel for the complainant as well as the State.

This petition has been filed under Section 482 Cr.P.C. for quashing the order dated 18.03.2016 passed by learned A.C.J.M., II, Madhubani in Babubarhi P.S. Case No. 122 of 2015 by which learned Magistrate has taken cognizance for the offences under Sections 341,323,498(A),504,34 of the Indian Penal Code.

Learned counsel for the petitioners has submitted that petitioner no. 1 is the husband. He is unable to make payment of monthly allowance as he is unemployed. It is further submitted that he always want to keep his wife but she is not ready to live with him.



Learned counsel for opposite party no. 2 has submitted that the husband (petitioner no. 1) has performed second marriage and living with his second wife. The counter affidavit has been filed stating therein in paragraph 7 that the informant remained ill and her daughter is studying in Convent School for which she is paying tuition fee and as such she is unable to maintain herself and her daughter. It has been further submitted that there is allegation against all accused persons that they assaulted her and ousted from house and presently she is living in her maike.

Learned counsel for the informant has further submitted that petitioner no. 1 performed marriage with complainant in the year 2004 according to Muslim rites and customs. She went to her sasural, but after giving birth to female child, her husband and his family members started torturing her for demand of dowry. It is further alleged that after hearing the plan of all the accused persons to kill her, she reached her maike and started living there.

After lodging of the FIR the police investigated the case and submitted charge-sheet against the petitioners. The court below on the basis of submission of charge-sheet and materials available in the case diary has taken cognizance against the petitioners for the offence under Sections 341,323,498(A),504,34 of the Indian Penal Code.



Learned counsel for the petitioners has submitted that petitioner no. 4, is brother of husband of the informant and petitioner 5 and 6 are cousin father-in-law of the complainant. They are not concerned with the affairs of the complainant and her husband.

After perusal of the written report, it appears that there is no allegation of specific overt act against petitioner no. 4, 5 and 6.

The Hon'ble Supreme Court in a decision reported in **2013 (1) PLJR 10 in Geeta Mehrotra and Anr. Vs. State of U.P. and Anr.**, observed that:-

“If the FIR did not disclose the commission of an offence, the Court would be justified in quashing the proceedings preventing the abuse of the process of law.”

Therefore, the impugned order dated 18.03.2016 passed by the learned A.C.J.M. II, Madhubani, in Babubarhi P.S. Case No. 122 of 2015, along with entire criminal proceeding with respect to petitioner no. 4, 5 and 6 is quashed.

So far allegation against petitioner no. 1, 2 and 3 are concerned, they are responsible for all the overt acts as alleged in the written report. It is mentioned that the husband has performed second marriage and is living with second wife.



Therefore, this court does not find any illegality in the impugned order with regard to petitioner no. 1, 2 and 3. The court below will proceed in the case against petitioner no. 1, 2 and 3.

This application is accordingly allowed in part.

The petitioner no. 1, 2 and 3 are at liberty to raise all the points as raised in this petition at the time of framing of charge which will be considered and disposed off by the court below in accordance with law without being prejudiced by this order.

(Sanjay Priya, J)

khushbu/-

AFR/NAFR	AFR
CAV DATE	N/A
Uploading Date	11/09/2018
Transmission Date	11/09/2018

