

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.31827 of 2015

Arising Out of PS. Case No.-629 Year-2011 Thana- MADHUBANI COMPLAINT CASE
District- Madhubani

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Moti Thakur, Son of Mahendra Thakur, Resident of village - Bhadaur, Police Station - Devdha, District – Madhubani.

... .. Petitioner/s

Versus

1. The State of Bihar.
2. Bina Kumari, Wife of Moti Thakur, D/o Sita Ram Thakur, Resident of village - Phulhar, Parsa Bazar Tol, Police Station - Harlakhi, District - Madhubani
3. Govind Thakur, Son of not Known, R/o village - Sundarpur, P.S. and District – Darbhanga.

... .. Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Ratanakar Jha, Advocate
For the Opposite Party/s : Mr. A. A. Khan (APP)

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CORAM: HONOURABLE THE CHIEF JUSTICE

ORAL JUDGMENT

Date : 04-04-2018

Seeking quashing of proceedings initiated against the petitioner by the Sub-divisional Judicial Magistrate, Madhubani in Complaint Case No.629 of 2011, Trial No.2993 of 2012 for offences under Sections 498A, 323 and 379 of the Indian Penal Code and seeking quashing of the order dated 30th April, 2012 passed by the Court taking cognizance in the matter, this application has been filed.

Despite service of notice to opposite party no.2 through her parents and after allowing jointness application filed by the petitioner, none is appearing for the opposite party no.2.



I have heard learned counsel for the petitioner, and the learned counsel representing the State Government and perused the record.

Petitioner is married to opposite party no.2 and it is stated that opposite party no.2 has filed the complaint on which the cognizance has been taken. Learned counsel for the petitioner took me through the body of the complaint and the documents available on record to say that the complaint is frivolous, omnibus and general allegations have been made and no *prima facie* case is made for registration of the complaint.

Having heard learned counsel for the petitioner and learned counsel representing the State and on going through the complaint it is seen that in para 1, complainant-opposite party no.2 speaks about her marriage as per the Hindu Law. In para 2, she speaks about gift being given by her parents but does not say specific as to what are the gifts and only general statement is made to say that the gifts and ornaments amounting to about Rs.1,00,000/-were given. In para 3, again omnibus and general allegations are made with regard to demand of dowry, but where the demand was made, a person before whom the demand was made and even the date on which the demand was made are not indicated. Thereafter, in para 4, it is stated that all family members



were harassing the complainant-opposite party no.2 without giving any specific date. Thereafter in para 5 again statement is made that all the family members were assaulted and ill treating without making any specific allegation and general statement is made that claiming a motorcycle to be given to the family, she was being harassed. Thereafter in para 6, it is stated that the family members of the complainant tried to compromise with the family of the petitioner but they denied the compromise. Thereafter, list of witnesses is being given.

A perusal of the complaint goes to show that except for making general and omnibus allegations with regard to incident in question, complainant-opposite party no.2 has not made any specific averment with regard to the specific acts of commission and omission and the dates, particulars and other material based on which the allegations are made. It is a case where the complainant-opposite party no.2-wife is not appearing in spite of issuance of notice and it is on the omnibus and general allegations made, case has been registered by the Court without considering the fact that the ingredients necessary for constituting the offences are not made out. Even if the general allegations are taken note of, there is nothing to indicate that as to how offences under Sections 323 and 379 of the Indian Penal Code are made out.



Keeping in view the aforesaid, it is a fit case where this application should be allowed keeping in view the law laid down by the Hon'ble Supreme Court in the case of **Gain Singh Versus State of Punjab and another**, (2012) 10 SCC 303.

Accordingly, this application is allowed and order dated 30.04.2012 passed by the learned Sub-divisional Judicial Magistrate, Madhubani, taking cognizance for the offences under Sections 498A, 323 and 379 of the Indian Penal Code in Complaint Case No.629 of 2011, Trial No.2993 of 2012 is hereby quashed.

(Rajendra Menon, CJ)

Sunil/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	19.04.2018
Transmission Date	19.04.2018

