

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.46613 of 2014

Arising Out of PS.Case No. -477 Year- 2007 Thana –BHABHU (KAIMUR) COMPLAIN C
District- BHABHUA (KAIMUR)

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1. Raju Ram @ Raju Son of Late Panchu Ram
 2. Mostt. Laxmi Devi Wife of Late Panchu Ram
 3. Renu Devi Wife of Raju Ram @ Raju All resident of village- New Mobarakpur, P.S.- Shahpur, District- Patna
 4. Rekha Devi Wife of Sachidanand Kumar
 5. Sachidanand Kumar Son of Mohan Mahto Petitioner No. 4 & 5 resident of Mohallah Nehru Nagar, P.S.- Patliputra, District- Patna

.... Petitioners

Versus

1. The State of Bihar
2. Shambhu Nath, Son of dukhi Ram Resident of Mugal Chak, Nai Basti (Chakia Road) Ward No.-2 P.O. & P.S.- Ali Nagar, District- Chandauli (Uttar Pradesh)

.... Opposite Parties

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Appearance:

For the Petitioner/s : Mr. Arun Kumar, Advocate.
Mr. Nirmal Kumar Sinha, Advocate.
For the Opposite Party/s : Mr. Anil Kumar Singh, APP.

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CORAM: HONOURABLE MR. JUSTICE PRAKASH CHANDRA JAISWAL

ORAL JUDGMENT

Date: 29-06-2018

Heard learned counsel for the petitioners. No one turned up on behalf of opposite party no.2 despite service of notice.

This application under Section 482 of the Code of Criminal Procedure has been filed for quashing the cognizance order dated 20.08.2007 passed by S.D.J.M., Bhabhua in Trial No. 438 of 2014 arising out of Complaint Case No. 477 of 2007 whereby the learned Magistrate finding prima facie case under Sections 498A and 494 of the Indian Penal Code and Section 4 of the Dowry Prohibition



Act ordered to issue summon against the petitioners.

Opposite party no.2-complainant filed complaint case no. 477 of 2007 against the petitioners under Sections 498A and 494 of the Indian Penal Code and Section 4 of the Dowry Prohibition Act with the case in succinct that he performed marriage of his daughter namely Pushpa Devi with the petitioner Raju Ram @ Raju in the year 1992 and her gauna one year later. After bidai, her daughter went to her marital house. All the accused persons had demanded motorcycle at the time of marriage, but on persuasion made by their relatives, they had left the demand. But they started subjecting his daughter to various sorts of torture over the dowry demand on her arrival at the marital house. They also tried to do away with her life by administering injection. Further allegation is that the petitioner no.1 Raju Ram performed second marriage with another lady namely Renu Devi.

During the course of enquiry, complainant examined himself on solemn affirmation and his three witnesses.

After perusing the complaint petition, solemn affirmation of the complainant and evidence of the witnesses and considering the materials available on record, learned Magistrate finding prima facie case against the petitioners under Sections 498A and 494 of the Indian Penal Code and Section 4 of the Dowry



Prohibition Act ordered to issue summon against them vide the impugned order.

It is submitted by learned counsel for the petitioners that marriage of petitioner no.1 namely Raju Ram was never performed with the daughter of opposite party no.2-complainant. As a matter of fact, petitioner no.1 had proposed marriage of his sister with the son of the complainant whereupon the complainant had proposed to perform marriage of his daughter with petitioner no.1 in lieu thereof, but the petitioner no.1 refused to oblige him. Being peeved up with this, complainant has filed this false and frivolous case against the petitioners with altogether wrong and concocted story. It is further submitted by learned counsel for the petitioners that petitioner no.1 was already married to petitioner no.3 Renu Devi in the year 1987 with whom he has one son and one daughter. So no question of marriage of petitioner no.1 with the daughter of opposite party no.2 arises. It is also submitted that petitioner no.2 Laxmi Devi, petitioner no.4 Rekha Devi and petitioner no.5 Sachidanand Kumar happens to be mother, married sister and brother-in-law respectively of petitioner no.1 and there is no specific allegation of making any dowry demand or subjecting the victim to any sort of torture against them and petitioner no.3. Hence, cognizance against petitioner nos.2 to 5 cannot be taken and the impugned order is nothing but abuse of



process of law.

From perusal of the record, it appears that the complainant on solemn affirmation and the three witnesses examined by him during the course of enquiry have unanimously stated that the complainant performed marriage of his daughter with Raju Ram petitioner no.1 and Raju Ram subjected the daughter of the complainant to various sorts of torture over the dowry demand and later on he performed second marriage with another girl. Hence, there is sufficient material making out prima facie case against petitioner no.1 Raju Ram under the aforesaid sections.

Petitioner nos.2, 3, 4 and 5 happen to be mother, wife, sister and brother-in-law of petitioner no.1 and there is no specific and clear allegation of making any dowry demand and subjecting the victim to any sort of torture against them rather the aforesaid allegations are vague & omnibus and that in my considered opinion would not be sufficient to put them on trial. Hence, no prima facie case is made out against the aforesaid petitioners.

Hon'ble Apex Court in **Geeta Mehrotra and Another vs. State of U.P. and Another** reported in (2012)10 SCC 741 and **Preeti Gupta and Another Vs. State of Jharkhand and Another** reported in (2010) 7 SCC 667 has been pleased to rule 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.

Hon'ble Apex Court in **Monju Roy and Others Vs. State of West Bengal** reported in **(2015) 13 SCC 693** has been pleased to observe that 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". Hon'ble Apex Court in **Kans Raj Vs. State of Punjab** reported in **(2000) 5 SCC 207** has been pleased to observe that 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. Hon'ble Apex Court in **Arnesh Kumar Vs. State of Bihar and Another** reported in **(2014) 8 SCC 273** has been pleased to observe that 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 498A 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, bedridden grandfathers and grandmothers of the husbands, their sisters living abroad for decades are arrested. In the said case, 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. This High Court in **Brijesh Das @ Brijesh Kumar Das & Ors. Vs. The State of Bihar & Anr.** reported in **2012(2) PLJR 545** has also held that there is specific allegation made against husband and no statement that other relatives assaulted the complainant. Allegations made against petitioner nos. 2 to 6 are vague and omnibus allegation made against the relatives of the husband, would not be sufficient to put them on a trial and set aside the cognizance order against the petitioner nos. 2 to 6 who happen to be in-laws of the complaint.

So far as the submission of learned counsel for the



petitioners is concerned that petitioner no.1 had approached the complainant to perform marriage of his sister with the son of opposite party no.2-complainant and in lieu thereof the complainant had proposed to perform marriage of his daughter with petitioner no.1 and as petitioner no.1 had already performed marriage with petitioner no.3 Renu Devi in the year 1987, hence there was no question of performing marriage of petitioner no.1 with the daughter of the opposite party no.2-complainant is concerned, it is a matter of consideration at the time of trial and not at the time of taking cognizance.

In the facts and circumstances of the case, aforesaid cognizance order taken against petitioner no.1 is upheld and quashed against petitioner nos. 2 to 5. Accordingly, this quashing petition stands disposed of.

(Prakash Chandra Jaiswal, J)

Mishra/-

AFR/NAFR	A.F.R.
CAV DATE	N.A.
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