

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.29205 of 2012

Arising Out of PS.Case No. -53 Year- 2012 Thana -Pirpanti District- BHAGALPUR

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1. Md. Parvez Alam, S/o Md. Khalil Ahmad, R/o Village Sundarpur, Police Station – Pirpanti, District – Bhagalpur.
 2. Md. Khalil Ahmad @ M.K. Ahmad S/o Late Md. Ibrahim R/O Village - Sundarpur, Police Station - Pirpanti, District - Bhagalpur
 3. Mustari Begum W/o Md. Khalil Ahmad R/O Village - Sundarpur, Police Station - Pirpanti, District - Bhagalpur
 4. Ruman @ Sadam S/o Md. Khalil Ahmad R/O Village - Sundarpur, Police Station - Pirpanti, District - Bhagalpur
 5. Rafath Jahan @ Juli D/o Md. Khalil Ahmad R/O Village - Sundarpur, Police Station - Pirpanti, District - Bhagalpur
 6. Iffat Jahan @ Afat Jahan D/o Md. Khalil Ahmad R/O Village - Sundarpur, Police Station - Pirpanti, District - Bhagalpur
 7. Shahnawaz Khan @ Pappu S/o Late Halim Khan R/O Village - Sundarpur, Police Station - Pirpanti, District - Bhagalpur
 8. Shili @ Farath Jahan D/o Md. Khalil Ahmad R/O Village - Sundarpur, Police Station - Pirpanti, District - Bhagalpur
 9. Md. Firoz @ Md. Firoz Hussain S/O Md. Jalil R/O Village - Sundarpur, Police Station - Pirpanti, District - Bhagalpur

.... Petitioners

Versus

1. The State of Bihar
2. Jeba Tabassum W/o Md. Parwez, D/o Md. Salauddin Ahmad R/o Mohalla - Lal Kothi Campus Hakim Amir Hassan Lane, P.S. Tatarpur, District - Bhagalpur

.... Opposite Parties

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Appearance:

For the Petitioners : Mr. Pramod Kumar Sinha, Advocate.
Md. Abdul Wadood, Advocate.
Mr. Najmul Hoda, Advocate.



Mr. Arvind Kumar Sharma, Advocate.

Mr. Chetan Kumar, Advocate.

For the Opposite Party No.2 : Mr. Ashok Kumar Singh, Advocate.

Mr. Ranjan Kumar Jha, Advocate.

Smt. Anita Kumari Singh, Advocate.

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CORAM: HONOURABLE MR. JUSTICE PRAKASH CHANDRA

JAISWAL

ORAL JUDGMENT

Date: 24-08-2018

Heard learned counsel for the petitioners, learned APP
for the State and learned counsel for the opposite party no.2.

2. This application under Section 482 of the Code of Criminal Procedure has been filed for quashing the cognizance order dated 19.08.2014 passed by the Sub-Divisional Judicial Magistrate, Bhagalpur whereby the learned Lower Court has taken cognizance of the offence under Sections 341, 323, 498-A, 504 and 506 of the Indian Penal Code and Sections 3 and 4 of the Dowry Prohibition Act against the petitioners in Pirpainti P.S. Case No. 53 of 2012.

3. Factual matrix of the case is that Pirpainti P.S. Case No. 53 of 2012 was instituted under Sections 341, 323, 498-A, 504 and 506 of the Indian Penal Code and Sections 3 and 4 of the Dowry Prohibition Act against the petitioners and other accused on the basis of the written report of Zeba Tabassum (Opposite party no.2) with the case in succinct that marriage of the opposite party no.2 was



performed with the accused Md. Parwez Alam on 15.12.2008 as per Muslim rites and rituals and after marriage, she went to her marital house. On arrival there, accused persons started demanding Rs. 5 lakhs in dowry and tormenting her over non-fulfillment of the said demand. But she stayed at her marital house enduring all the misery and became pregnant. In the meantime, she went to her maternal house along with her brother and gave birth to a girl child there. The accused persons named in the F.I.R. refused to perform her bidai till fulfillment of the aforesaid demand and filed Matrimonial Case No. 97 of 2009 in the Family Court, Bhagalpur to save their skin. However, on the intervention of the court, she went to her marital house, but there was no change in the attitude of the accused persons and they continued to subject her to various sorts of torture. They also tried to strangle her, resultantly she and her girl child fell ill and lastly she left her marital house along with her father on 22.12.2011 and filed this case.

4. Aforesaid case was investigated by the police and on conclusion of the investigation, I.O. submitted chargesheet against the aforesaid accused persons and after considering the chargesheet and materials available on record, learned S.D.J.M., Bhagalpur took cognizance of the offence under Sections 341, 323, 498-A, 504 and 506 of the Indian Penal Code and Sections 3 and 4 of the Dowry



Prohibition Act against the petitioners vide order dated 19.08.2014.

5. It is submitted by learned counsel for the petitioners that no such occurrence as alleged ever took place. Opposite party no.2 had left her marital house at her own without any reasonable excuse and for restitution of the conjugal rights, her husband had filed Matrimonial Case No. 97 of 2009 and the present case has been filed in order to create defence. It is further submitted that petitioner no.2 happens to be father-in-law, petitioner no.3 mother in law, petitioner no.4 brother in law, petitioner nos. 5, 6 and 8, sisters-in-law of the opposite party no.2 while petitioner nos. 7 and 9 happen to be distant relatives of the husband of the opposite party no.2. There is no specific allegation of making any dowry demand or subjecting the opposite party no.2 to any sort of torture against them rather all the allegations levelled against the aforesaid petitioners are general and omnibus in nature. Hence, cognizance against petitioner nos. 2 to 9 cannot be taken and impugned order is nothing but the abuse of the process of the law.

6. On the other hand, learned APP for the State and learned counsel for the opposite party no.2 advocating the correctness and validity of the impugned order have submitted that petitioner nos. 2 to 9 being her in-laws made dowry demand and subjected her to various sorts of torture on not coughing up the said



demand and after investigation of the case and finding the case true I.O. submitted chargesheet against them and learned lower court considering the facts and materials available on record have rightly taken cognizance of the offence against the aforesaid petitioners which is liable to be upheld and this petition is shorn of merit and is liable to be dismissed.

7. From perusal of the record, it appears that the petitioner nos. 2 to 6 and 8 are the in-laws being parents-in-law, brothers-in-law and sisters-in-law of the opposite party no.2 and petitioner nos. 7 and 9 are distant relative of the husband of the opposite party no.2. From perusal of the written report, it appears that the allegation of making dowry demand from opposite party no.2 and her father and subjecting the opposite party no.2 to torture on not coughing up of the aforesaid demand by the petitioner nos.2 to 9 is general and omnibus in nature. From perusal of the case diary furnished by the petitioners during the course of argument, it appears that opposite party no.2 in her further statement and all the witnesses barring witnesses in Para-11 and 25 of the case diary have given general and omnibus statement regarding making of dowry demand and subjecting the opposite party no.2 to torture over not coughing up of the aforesaid demand by the husband of the opposite party no.2 and petitioner nos. 2 to 9. Though witnesses in Para-11 and 25 of the



case diary have made specific allegation of assaulting opposite party no.2 and driving her out of her marital house over demand of the dowry but not against any of the petitioner nos. 2 to 9 rather against the husband of the opposite party no.2. Moreso, even not a single incident has been alleged against petitioner nos. 4 to 9 as to how they could be motivated to demand dowry when only they are brothers, sisters and distant relatives of the husband of the opposite party no.2. There is no specific allegation of any overt act against any of the aforesaid petitioners and in my considered opinion, it would be the clear abuse of the legal and judicial process to mechanically send the petitioners to undergo trial unless of course the F.I.R. discloses specific allegations which would persuade the court to take cognizance of the offence alleged against them. It is the well settled principle that if the F.I.R. did not disclose the commission of the specific offence by the accused, the court would be justified in quashing the proceedings preventing the abuse of the process of law.

8. 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.

9. 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.

10. It is pertinent to mention here that petitioner no.1 who happens to be the husband of the opposite party no.2 has passed



away during the pendency of the case and the case stood withdrawn against the petitioner no.1 at the instance of the opposite party no.2.

11. In the facts and circumstances of the case and in view of the aforesaid case laws, aforesaid cognizance order taken against the petitioners is quashed and this quashing petition is allowed accordingly.

(Prakash Chandra Jaiswal, J)

Mishra/-

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