

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.3139 of 2016

Arising Out of PS.Case No. -1264 Year- 2014 Thana -SITAMARHI COMPLAINT CASE District-
SITAMARHI

=====

1. Shiv Shankar Thakur, Son of Sitaram Thakur
2. Sima Kumari, Wife of Shiv Shankar Thakur
Both residents of Village- Machhahan, P.S.- Sitamarhi, District- Sitamarhi.

.... Petitioner/s

Versus

1. The State of Bihar
2. Neelam Kumari @ Neelam Devi, daughter of Deven Kumar, resident of
Village- Machhahan, P.S.- Sitamarhi, District- Sitamarhi.

.... Opposite Party/s

=====

Appearance :

For the Petitioner/s : Mr. Ashhar Mustafa, Advocate.
For the State : Mr. Umashankar Prasad Singh, A.P.P.
For the Opposite Party No.2 : Mr. Alok Kumar Jha, Advocate.

=====

CORAM: HONOURABLE MR. JUSTICE SANJAY PRIYA

ORAL JUDGMENT

Date: 14-09-2018

1. This application under Section 482 of the Code of Criminal Procedure has been filed for quashing the order dated 02.05.2015 passed by learned Sub Divisional Judicial Magistrate, Sadar Sitamarhi, in Complaint Case No. C1-1264 of 2014 by which the learned Magistrate after holding enquiry has found *prima facie* case against the petitioners and other accused persons for the offences under Sections 493 and 120B of the Indian Penal Code.

2. Heard learned counsel for the petitioners learned counsel for the opposite party No. 2 as well as State.

3. Learned counsel for the petitioners has submitted



that father of the complainant has earlier filed case against petitioners and other accused persons vide Complaint Case No. C1-1147 of 2011 levelling allegation that marriage of Neelam Kumari @ Neelam Devi (opposite party No. 2) was settled with Sumit Kumar @ Manoj Kumar on the condition that Devan Thakur (father of the opposite party No. 2) will have to pay Rs.65,000/- to Ram Pervesh Thakur as marriage expenses. It is further alleged in the aforesaid complaint that joint photograph of opposite party No. 2 and Sumit Kumar @ Manoj Kumar was also taken. Thereafter it was decided that the payment of the entire amount of Rs.65,000/- was to be made before marriage. The engagement ceremony was performed on 8.6.2011 and date of marriage was fixed on 20.6.2011. The marriage was broken due to non fulfillment of aforesaid demand.

4. The allegation levelled against the petitioners in the earlier case is that they were also present and have counted the money.

5. In the instant case the complainant has levelled allegation against the petitioners who happens to be the cousin brother and sister-in-law of the complainant that they had taken her to village Narainpur on the occasion of marriage of elder brother of petitioner No. 2 with Umesh Kumar in the year 2010 and during that period, the said Seema Kumari (petitioner No. 2) got the complainant introduced



to her parents and negotiated her marriage with her younger brother Manoj Kumar. Thereafter, the complainant came in contact with Manoj Kumar. The complainant further alleged that she stayed for ten days at village Narainpur in the paternal house of her *Bhabhi* Seema Kumari (petitioner No. 2) and, thereafter, she returned back. It is further alleged that petitioner No. 1 talked with the complainant's father and brother regarding marriage of his brother-in-law Manoj Kumar with complainant. It was agreed that a sum of Rs.1,25,000/- was to be given by father of the complainant to Shiv Shankar Thakur as marriage expenses. The father of the complainant paid a sum of Rs.65,000/- advance towards marriage expenses and the date of marriage was fixed on 20.06.2011. It was agreed that balance money would be paid one month before the marriage. Manoj Kumar called the complainant to Sitamarhi through telephonic message for purchasing ornaments of her choice. The complainant along with her mother went to Sitamarhi. Manoj Kumar met them near old bus stand. Thereafter, Manoj Kumar asked the mother of the complainant to wait near the tea stall and took the complainant along with him on pretext of some talk. Subsequently, Manoj forced the complainant to board a bus and ultimately she was taken to some unknown place at Patna. The complainant was confined in Patna for ten days in a room and on allurements of marriage, Manoj committed rape on her despite her



protest. She was even tortured, abused and assaulted by the said Manoj. After ten days, the complainant was taken to Pupri (Sitamarhi) by bus where Manoj Kumar asked her to tell her father to pay a sum of Rs.2,51,000/- as dowry for her marriage with him. The said Manoj Kumar continuously committed rape on her for ten days, on account of which, she became pregnant. She did not tell her parents about her pregnancy or to anybody due to social stigma. When information of pregnancy was given to the petitioners, they gave some medicines to the complainant and after consuming it, her pregnancy was terminated. It is further alleged that father of the complainant requested the accused Ram Pravesh Thakur for marriage of complainant with Manoj Kumar, then he was assaulted and abused by Ram Pervesh Thakur, Manoj Kumar and Umesh Kumar and further made demand of Rs.2,51,000/- and Motorcycle. Petitioner No. 2 and accused Shiv Shankar Thakur also abused and threatened the father of complainant with dire consequences. In spite of that, the father of complainant continued his contact with the accused persons with request for marriage of his daughter. Ram Pervesh Thakur and Shiv Shankar Thakur abused and assaulted father of the complainant on 2.8.2013.

6. Police after investigation has submitted final form in the case. The learned Magistrate on the basis of protest petition



hold enquiry under Section 202 Cr. P.C. and has found *prima facie* case against the petitioners along with other accused persons for the offence under Sections 493 and 120B of the Indian Penal Code.

7. Learned counsel for the petitioners submits that petitioners are own cousin brother-in-law and sister-in-law of the complainant. They have been falsely implicated in the instant case only to give pressure so that marriage of the complainant can be performed with Manoj Kumar. The main allegation of committing overt act is against Manoj Kumar.

8. This Court after looking into allegation in the protest-cum-complaint petition and also the impugned order and submission of the parties, finds that prior to lodging of the instant case, the complainant has filed Complaint Case No. C1-1147 of 2011 against the petitioners and other accused persons wherein totally different allegation has been levelled against the petitioners. The Xerox copy of Complaint Case No. C1-1147 of 2011 has been enclosed as Annexure-4. It has been informed by the petitioners that Complaint Case No. C1-1147 of 2011 is already at the stage of trial and witnesses have also been examined.

9. In the instant case, this Court does not find any allegation of specific overt act against the petitioners. The instant case has been filed merely to give pressure to the petitioners.



10. Therefore, the impugned order dated 02.05.2015 passed by learned Sub Divisional Judicial Magistrate, Sadar Motihari, in Complaint Case No. C1-1264 of 2014 along with the entire criminal proceeding against the petitioners is hereby quashed.

11. This Criminal Miscellaneous application is accordingly allowed.

(Sanjay Priya, J)

S.Ali/-

AFR/NAFR	AFR
CAV DATE	N.A.
Uploading Date	24/09/2018
Transmission Date	24/09/2018

