

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.51839 of 2013

Arising Out of PS. Case No.-1872 Year-2010 Thana- SAHARSA COMPLAINT CASE
District- Saharsa

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1. Rekha Devi Wife of Suryanarayan Chaudhary Resident of Village- Diwanganj, P.S.- Pratapganj, District- Supaul
 2. Suryanarayan Chaudhary Son of Late Ramji Chaudhary Resident Of Village- Diwanganj, P.S.- Pratapganj, District- Supaul
 3. Punam Devi Wife of Pappu Chaudhary Resident of Village- Dharahara, P.S.- Raghobpur, District- Supaul

... .. Petitioner/s

Versus

1. The State of Bihar
2. Usha Kumari Wife of Ajay Chaudhary Resident of Village- Dharahara, P.S.- Raghobpur, District- Supaul

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr. Dinesh Maharaj Mr. Satish Kumar Singh
For the Opposite Party no. 2	:	Mr. Amarnath Jha
For the State	:	Mr. Jharkhandi Upadhyay.

CORAM: HONOURABLE MR. JUSTICE PRAKASH CHANDRA JAISWAL

ORAL JUDGMENT

Date : 11-05-2018

Heard learned counsel for the petitioners, learned counsel for the O.P. no. 2 as well as learned APP for the State.

2. This application under Section 482 of the Code of Criminal Procedure has been filed for quashing the order dated 05.09.2011 passed by Sub Divisional Judicial Magistrate, Saharsa, in Complaint Case no. 1872 of 2010, whereby the learned Magistrate finding making out *prima facie* case under Section 498A of the Indian Penal Code and Section 4 of the Dowry Prevention Act against the accused persons including the



petitioners, ordered to issue summons against them.

3. Factual matrix of the case is that O.P. no. 2 (Usha Kumari) filed Complaint Case no. 1872 of 2010 against seven accused persons named in the complaint petition including the petitioners under Sections 498A, 323, 379, 504 of the Indian Penal Code and Section 3/4 of D.P. Act with the case, in succinct, that marriage of the O.P. no. 2 was solemnized with accused Ajay Chaudhary on 29.04.2002. After marriage, she went to her marital house on *vidai*, but the accused persons were not satisfied with the articles and gift provided in the marriage by her maternal people and they started passing comment and demanded Rs. 50,000/- for running business. As her father failed to cough up their aforesaid demand, all the accused persons started subjecting her to various sorts of torture and cruelty over the said demand. Subsequently, her father anyhow managed Rs. 30,000/- and accorded to the accused persons, whereupon they allowed the O.P. no. 2 to go with her father to her maternal house after one year. She became pregnant couple of times, but due to atrocity meted out to her by the accused persons, there was miscarriage. Her husband took her to Rajasthan at his service place, but he continuously subjected her to torture there at the instance of the other accused persons and



finally they drove her out of her marital house snatching her belongings.

4. O.P. no. 2 examined herself on S.A. and also examined three witnesses during course of inquiry.

5. Learned Magistrate after perusing the complaint petition and material available on records, passed the impugned order as detailed in the earlier paragraph.

6. It is submitted by learned counsel for the petitioners that petitioner no. 1 happens to be sister-in-law while petitioner no. 2 brother-in-law of the complainant. They are living separately from the complainant and petitioner no. 3 is the gotiya of the complainant and marriage of petitioner no. 3 was solemnized around three years later to the marriage of complainant. Husband of the complainant is living in Rajasthan in connection with his service and petitioners have no concern with the affairs of the complainant and her husband. They never made any demand and subjected the complainant to cruelty. They have been falsely implicated in the case as they happen to be relatives of husband of the complainant in order to harass them. There is no specific allegation of any demand and torture against them. Husband of the complainant had also filed a petition for restitution of conjugal rights vide M.A. no. 57 of



2010 against the complainant, but as the complainant did not turn up in the said case, it proceeded *ex parte* against her. Hence, the proceeding against the petitioners is nothing but an abuse of process of the Court. So, the impugned order is liable to be quashed.

7. On the other hand, learned counsel for the O.P. no. 2 and learned APP for the State submitted that all the accused persons including the petitioners demanded dowry and subjected the O.P. no. 2 to various sorts of torture over the said demand resulting miscarriage of the O.P. no. 2 couple of times. Husband of complainant also subjected her to torture and cruelty taking her to Rajasthan, at his place of service at the instance of petitioners and other accused persons, and finally the accused persons drove her out of her marital house snatching her belongings, and learned lower court considering all the facts and circumstances of the case, S.A. of complainant and testimony of witnesses examined during course of inquiry, after making proper inquiry has taken cognizance against all the accused persons including the petitioners, which is liable to be upheld.

8. From perusal of record, it appears that Petitioner no. 1 happens to be married sister-in-law while petitioner no. 2



is the brother-in-law of the complainant (O.P. no. 2) and husband of petitioner no. 1 and they are living separately from the complainant as her husband and his parents are resident of village Dharahara, P.S.- Raghampur, District- Supaul while the aforesaid two petitioners are resident of village Diwanganj, P.S.- Pratapganj, District- Supaul as evident from the complaint petition. Petitioner no. 3 was not in existence in the marital house of the O.P. no. 2 at the time of initial demand of dowry and torture meted out to the O.P. no. 2 as she was married three years later to the aforesaid occurrence. From perusal of complaint petition, it appears that there is no specific allegation against the aforesaid petitioners rather allegations are general and omnibus in nature and they also do not appear to be beneficiary of demand of dowry.

9. 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.

10. 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 498-A 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 498-A 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.

11. In view of the aforesaid facts and circumstances of the case and the aforesaid case laws, the order taking cognizance against these petitioners, in my considered opinion is nothing, but an abuse of process of the Court. Accordingly, this petition is allowed and the impugned order is quashed.

(Prakash Chandra Jaiswal, J)

rohit/-

AFR/NAFR	AFR
CAV DATE	N.A.
Uploading Date	16-05-2018
Transmission Date	16-05-2018

