

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.2288 of 2016

Arising Out of PS.Case No. -28684 Year- 2014 Thana -PATNA COMPLAINT CASE District -
PATNA

- =====
1. Dr. Rabindra Nath Sinha, son of late Brijnandan Singh,
 2. Sudha Sinha, wife of Dr. Rabindra Nath Sinha,
 3. Nishtha Sinha, daughter of Dr. Rabindra Nath Sinha, all are resident of House No.2M/17, Mahatma Gandhi Nagar, Post- TV Tower, P.S.- Agam Kuan, Distt Patna-800026

.... Petitioner/s

Versus

1. The State of Bihar.
2. Niru Devi, w/o late Om Prakash Singh, all are resident of Rajendra Nagar, Road No. 10 B, P.S.- Kadamkuan, Distt-Patna-800026.

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mrs. Soni Shrivastava, Advocate
Mr. Sanjay Kumar Singh, Advocate
For the Opposite Party No.1: Mr. Jharkhandi Upadhyay, APP
For the Opposite Party No.2: Dr. Meeta Mohini, Advocate

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CORAM: HONOURABLE MR. JUSTICE SANJAY PRIYA

ORAL JUDGMENT

Date: 09-08-2018

This application under Section 482 of the Code of Criminal Procedure has been filed for quashing the order dated 03.07.2015 passed by the Sub-Divisional Judicial Magistrate, Patna, in Complaint Case No.28684-C of 2014 by which the learned Magistrate after holding enquiry has found *prima facie* case against the Petitioners for the offence under Section(s) 498-A Indian Penal Code and Section 4 of the Dowry Prohibition Act.

Heard learned counsel for the Petitioners, learned APP for the State as well as learned counsel for the Opposite Party No.2.

Counsel for the Petitioners submits that Petitioner No.1



is *Samdhi* and Petitioner No.2 is *Samdhin* of the Complainant. Petitioner No.3 is *Nanad* of the Complainant's daughter. Both Petitioner Nos.1 and 2 are old persons. Petitioner No.3 is daughter of Petitioner Nos.1 and 2. She is residing in United States of America since 2005 after her marriage with Kumar Ranjan Bhartiya in the year 2005. She has been staying in United States of America with her husband and has visited India only intermittently on 2-3 occasions. Counsel for the Petitioners further submits that husband (son of the Petitioner Nos.1 and 2) had filed case for restitution of conjugal rights vide Matrimonial Case No.32 of 2010, which was allowed by the Additional Principal Judge, Family Court, Patna, by order dated 09.04.2013. Aforesaid order is enclosed as Annexure-4.

From perusal of the aforesaid order, it appears that the wife (daughter of the Complainant-Opposite Party No.2) agreed before the Court to live with husband and on admission of both parties (husband and wife) the decree was passed. Counsel for the Petitioners further submits that, at present, wife is living in the Flat of her husband in Mumbai. These Petitioners have no concern with the affairs of husband and wife. Wife has already filed a case of domestic violence against the husband vide Domestic Violence Case No.15/ DV of 2012 in the Court of Metropolitan Magistrate, Mumbai.

Counsel for the Petitioners further submits that in the



Solemn Affirmation of the Complainant and in the statement of daughter of Complainant recorded under Section 202 Cr. P. C. there is no any allegation of specific overt act against the Petitioners. In fact, daughter of the Complainant, Nisha Sinha, has levelled allegation only against her husband in her statement before the Magistrate recorded under Section 202 Cr.P.C. Solemn Affirmation of the Complainant and statement of three witnesses recorded during enquiry have been enclosed as Annexure-I and II series to the supplementary Counter Affidavit filed on behalf of the Opposite Party No.2. Counsel for the Petitioners further submitted that in the entire Complaint Petition, which is very long, there is nothing specific against the Petitioners. Merely omnibus and vague allegation has been levelled that they were also demanding dowry and committing torture with the daughter of the Complainant.

Counsel for the Complainant-Opposite Party No.2 has submitted that in various paragraphs of the Complaint Petition allegation has been made against the Petitioners of committing torture with the daughter of the Complainant along with Manish Singh, son of Petitioner Nos.1 and 2. Counsel for the Complainant-Opposite Party No.2 has further submitted that earlier also case was filed by Petitioner No.1 against the Complainant of this case vide Complaint Case No.2021-C of 2010, which was, ultimately, quashed by judgment dated 17.8.2015 passed in Cr. Misc. No.27605 of 2012.



This Court has heard submission of both parties, in detail. This Court has gone through the allegation in the Complaint Petition and also Solemn Affirmation of the Complainant as well as statement of all the three witnesses including daughter of the Complainant Nisha Sinha recorded during enquiry under Section 202 Cr. P. C. This Court has also gone through the order dated 09.04.2013 passed by the learned Additional Principal Judge, Family Court, Patna, in Matrimonial Case No.32 of 2010 filed by the husband (son of Petitioner Nos.1 and 2) for restitution of conjugal rights with daughter of the Complainant, Nisha Sinha, by which the learned Additional Principal Judge, Family Court, Patna, had allowed the application as the wife, Nisha Sinha, had agreed to live with her husband. Aforesaid order passed under Section 9 of the Hindu Marriage Act is enclosed as Annexure-4.

These Petitioners are admittedly *Samdhi*, *Samdhin*, (Petitioner Nos.1 and 2) and daughter of Petitioner Nos.1 and 2 (Petitioner No.3). They have no concern with the affairs of daughter of the Complainant and her husband, Manish Sinha, (son of Petitioner Nos.1 and 2 and brother of Petitioner No.3). These Petitioners are residing separately from them in Patna, whereas, from the Complaint Petition itself, it appears the daughter of the Complainant was living with her husband, Manish Sinha, in Mumbai.



The Complainant in her Solemn Affirmation recorded during enquiry has admitted that her daughter is still living in Mumbai in the flat of her husband (son of Petitioner Nos.1 and 2).

In view of such, this Court is of the view that continuance of criminal proceeding against the Petitioners, who have no concern with the family affairs of the husband and wife (son of the Petitioner Nos.1 and 2 and daughter of the Complainant), will be mere harassment to them and abuse of process of Court.

The Hon'ble Supreme in the case of *Geeta Mehrotra and anr. Vs. State of UP and anr.* reported in *2013 (1) PLJR 10*, has held that there is growing tendency of involving the entire family members of husband in matrimonial dispute at the instance of Complainant to settle personal score.

In such circumstances, impugned order dated 03.07.2015 passed by the Sub-Divisional Judicial Magistrate, Patna, in Complaint Case No.28684-C of 2014 along with entire criminal proceeding with respect to the Petitioners is hereby quashed.

This application is, accordingly, **allowed**.

(Sanjay Priya, J)

J.Alam/-

AFR/NAFR	AFR
CAV DATE	N/A
Uploading Date	18-08-2018
Transmission Date	18-08-2018

