

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.19069 of 2015

Arising Out of PS. Case No.-2323 Year-2012 Thana- PATNA COMPLAINT CASE District-
Patna

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1. Smt. Prem Saxena w/o Major Prakash Chandra Saxena
 2. Major (Retd) Prakash Chandra Saxena s/o Late R.N. Saxena.
Both resident of House No 6/984, Vikash Nagar, P.S.- Vikash
Nagar Lucknow- 226022, (U.P.)

... .. Petitioner/s

Versus

1. The State of Bihar
2. Anupma Saxena W/o Amber Saxena Opp Angan Appt. Congress Maidan,
Kadam Kuan Dist. - Patna.

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Syed Mohammad Shabbir Alam

For the Opposite Party/s : Mr. Ajay Kumar-II, APP

CORAM: HONOURABLE THE CHIEF JUSTICE

ORAL JUDGMENT

Date : 11-07-2018

In this petition filed under Section 482 of the Code of Criminal Procedure, the petitioners who are senior citizens and are more than 70 years of age, are father-in-law and mother-in-law of the respondent-complainant seek quashing of Complaint Case No. 2323(C) of 2012 registered against them in which cognizance has been taken by the Judicial Magistrate 1st Class, Patna, on 05.06.2013 for offence under Section 498A/34 of the Indian Penal Code.

It is the case of the complainant that she was married to the son of the petitioners on 15.02.2002. Out of the wedlock a



daughter was born to her on 12.06.2003 and a son was born on 25.10.2009. She claims to be residing in Patna but after marriage she is staying with her in-laws in Lucknow. It is alleged that illegal demand of dowry was made and she was harassed for non-payment of dowry and contending that the same amounts to an offence under Section 498A/34 IPC the complaint was filed.

It is the case of the petitioners that they are senior citizens. Overwhelming medical papers in support of various ailments suffered by the petitioners suggest that they are bed-ridden and are staying in Lucknow and have never come to Patna to commit any offence. That apart, from the body of the complaint and the averments made therein it is alleged that only vague and unspecified allegations with regard to harassment is made without any specific details or specific act of commission or omission attributable to the petitioners indicated in the body of the complaint.

Accordingly, contending that based on the aforesaid narration of facts as it transpired from the complaint, no case is made out for prosecuting the petitioners under Section 498/34 IPC and prayer is made to quash the complaint. In support of the contention, reference is made to the judgments of the Supreme Court in the cases of *Neelu Chopra vs. Bharti* [(2009) 10 SCC



184], Geeta Mehrotra vs.State of Uttar Pradesh [(2012) 10 SCC 741] and **Amit Kapoor vs. Ramesh Chander [(2012) 9 SCC 460]** to say that in the facts and circumstances of the case the complaint is liable to be quashed.

Finally, reliance is placed on the judgment of the Supreme Court in the case of **Taramani Parakh vs. State of Madhya Pradesh [(2015) 11 SCC 260]** to say that the complaint is liable to be quashed.

I have heard learned counsel for the parties. On a perusal of the record it is seen that in the complaint filed except for making vague allegation with regard to demand of dowry and harassment by the petitioners and their son that also still while residing in Lucknow with them the complaint case has been filed in Patna. If the averments made in the complaint which are vague and general in nature are analyzed in the light of the backdrop of the law laid down by the Supreme Court in the aforesaid cases, it would be seen that the complaint prima facie seems to be absurd, unspecified, does not give any detail of the acts of commission and omission which constitutes ingredients necessary for commission of the offence, are general in nature and has been made in omnibus manner. There is no allegation of torture and beating. Only general allegations of harassment are made out. In her statement given



before the court on 18.12.2012 which forms the basis for registration of the complaint the complainant only says that she was married to the son of the petitioners on 15.02.2002. After one month of the marriage incorrect allegations were levelled against her and she was scolded. It was alleged that she has not brought T.V., Fridge and other domestic materials and they used to demand jeweleries and more rupees. This seems to have occurred in the year 2002 and 2003 but no complaint in this regard was made at that point of time. It is said that thereafter she came to Patna and stayed for more than two-and-a half years in Patna. Thereafter her husband came and took her to Lucknow where she started living with him and in the year 2009 she gave birth to a boy. Thereafter she came back to Patna and her husband illegally took out certain amount from her joint account. It is alleged that her in-laws took away her gold ornaments. It is said that frustrated by this action also she came to Patna in October 2011 and is staying in Patna since then. On a query made by the court, she says that she is M.A. passed, her father worked as Sales Manager in Tata Motors and is now retired. Her father-in-law retired from Army in the year 2000. Both her children are staying with her. Her husband has filed a case for custody of the children and she has filed a case for maintenance. She further says that she has not filed any case of



demand of dowry. She says that after 2003, she has been staying most of the time in Patna. She further says that on the basis of mutual understanding with her husband she came to Patna. Finally she says that her in-laws are more than 70 years of age. A complete reading of the statement recorded on oath in the court which forms the basis for registration of the complaint goes to show that as far as the present two applicants are concerned, nothing is averred or whispered which would go to make out an offence under Section 498A/34 IPC.

Taking note of the totality of the circumstances and the fact when the court finds that the process initiated is only a process for abusing the process of law inasmuch as the respondent-complainant is continuously staying in Patna since last more than four years, even after a decree passed against her for restitution of conjugal life she has no intention to stay with her husband, instead has initiated a case for maintenance and other matrimonial disputes against the husband. As far as the present case against the applicants for criminal offence under Section 498A/34 IPC is concerned, a bare reading of the complaint does not make out any case for proceeding with the offence and, therefore, the complaint is liable to be quashed.



Accordingly, I allow this application. Proceeding in Complaint Case No. 2323(C) of 2012 pending in the court of the Judicial Magistrate 1st Class, Patna is quashed.

(Rajendra Menon, CJ)

mrl./-

AFR/NAFR	NAFR
CAV DATE	N.A.
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