

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.5005 of 2018

Arising Out of PS.Case No. -427 Year- 2013 Thana -PATNA COMPLAINT CASE District-
PATNA

=====

1. Lalmuni Devi, W/o Late Bhagwan Singh, R/o- Singh House, Musallahpur, Near- Nathun Lane, Opp- Vaishno Sweets, Dargah Road, PS- Kadamkuan, District- Patna.
2. Devendra Singh @ Manoj Kumar, S/o Late Bhagwan Singh, R/o- Singh House, Musallahpur, Near- Nathun Lane, Opp- Vaishno Sweets, Dargah Road, PS- Kadamkuan, District- Patna.

.... Petitioner/s

Versus

1. The State of Bihar.
2. Sanyukta Devi, D/o- Shyama Rai, resident of Village- Sarari, P.S. Shahpur, Danapur, District- Patna.

.... Opposite Party/s

with

Criminal Miscellaneous No.7835 of 2018

Arising Out of PS.Case No. -427 Year- 2013 Thana -PATNA COMPLAINT CASE District-
PATNA

=====

1. Krishna Prasad, s/o Late Nathun Prasad, R/o-Venna Niwas, Musallahpur, Nathun Lane, Dargah Road, P.S.- Kadamkuan, District-Patna.
2. Anita Devi, W/o Krishna Prasad, R/o-Venna Niwas, Musallahpur, Nathun Lane, Dargah Road, P.S.- Kadamkuan, District-Patna.
3. Ajay Kumar @ Vicky, s/o Krishna Prasad, R/o-Venna Niwas, Musallahpur, Nathun Lane, Dargah Road, P.S.- Kadamkuan, District-Patna

.... Petitioner/s

Versus

1. The State of Bihar.
2. Sanyukta Devi, D/o Shyama Rai, PS Shahpur, Danapur, District-Patna.

.... Opposite Party/s

=====

Appearance :

(In Cr.Misc. No.5005 of 2018)

For the Petitioner/s : Mr.

For the Opposite Party/s : Mr.

(In Cr.Misc. No.7835 of 2018)

For the Petitioner/s : Mr. Ranjeet Choubey

For the Opposite Party/s : Mr. Smt. Pronati Singh

=====

CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL ORDER

4 03-10-2018

These two applications have been preferred for setting aside the order dated 10.10.2017 passed by the learned S.D.J.M., Danapur, Civil Courts, Patna District, in Complaint Case No. 427 (C) of 2013. By the impugned order the learned Court below has been pleased to dismiss the discharge petition (s) filed by the



accused-petitioners in both the cases.

Criminal Miscellaneous No. 5005 of 2018 has been preferred by the mother-in-law and the elder brother-in-law of the O.P.No.2. They are facing prosecution in the said complaint case for the offences alleged under Sections 323 and 498 (A) of the Indian Penal Code and under Section 4 of the Dowry Prohibition Act.

In the Criminal Miscellaneous No. 7835 of 2018, the three petitioners are the cousin father-in-law, wife of the cousin father-in-law and the cousin devar of the O.P. No.2. They are also facing prosecution for the same charges.

Learned Senior Counsel for the petitioners submits that on perusal of the complaint petition (P2), it would appear that as per the complainant, at the time of marriage between the complainant and the son of the petitioner in the first application, the parents of the complainant had given a sum of Rs.8,00,000/- in cash, one 220 CC Pulsar Bike Motorcycle of Bajaj Company, one golden chain of Rs.25,000/- and other articles of approximately Rs.10,00,000/-. The complainant was informed that the boy was working in Irrigation Department as he was appointed on compassionate ground after the death of his father.

It is further submitted that in the complaint petition there is a general and omnibus allegations that after the marriage,



the accused persons took the complainant to their house but after few days only they started torturing the complainant and they were asking the complainant to demand a sum of Rs.5,00,000/- from her father so that they can purchase a piece of land separately to build their house. It is alleged that when the complainant told them that they were behaving badly with her despite the fact that her father had given substantial amount, at about 08:00 P.M on 19.05.2012 all the accused persons with an intention to kill the complainant pushed her on the Gas Stove in burning conditions by which her Sari caught fire.

It is alleged that she was also assaulted by 'Chura' however, learned Senior Counsel submits that the complainant has nowhere alleged as to who pushed her on the burning Gas Stove and who had given her the 'Chura' blow. It is submitted that the complainant has herself stated in the complaint petition that she was brought to her Naihar, however, in order to avoid her burden to prove the allegations she has also stated that she was not allowed to bring her box which was containing costly Saris and the burnt Sari. It is alleged that she had left the box containing Saris of Rs.1,00,000/- and ornaments of Rs.3,00,000/-. In the concluding part, the complainant also alleged that she is living in her Naihar and whenever she tried to talk to her husband, he abuses her and cut the calls threatening her that he is going to



perform a second marriage with some other girl. The complainant also alleged that the accused no. 7 who is daughter of the sister of mother-in-law is also residing in the Sasural of the complainant and she was also beating and torturing the complainant along with other accused persons.

Learned Senior Counsel has drawn the attention of this Court towards the statements made by the complainant on oath wherein she has categorically stated that on the occasion of marriage her father had given a lot of gifts to the bridegrooms family as well as to her. It is pointed out that neither in the complaint petition nor in the solemn affirmation there is any allegation of demand of dowry at the time of marriage.

In course of solemn affirmation, she has stated that when the accused persons refused to keep her then she lodged the present case. In answer to Court's query, the complainant stated that her Nanad, Anita Devi has been married prior to her marriage, she has two children, the daughter of her Nanad is about 20 years old. She has further stated that Krishna Rai (cousin father-in-law) and Anita Devi (cousin mother-in-law) are living separately. They have two children, the eldest son is aged about 25 years. The complainant has also stated that she had not lodged any case in the police station.

Learned Senior Counsel submits that vide order dated



01.07.2013, the learned Additional Chief Judicial Magistrate, Danapur took cognizance of offences under Sections 498 (A) and 323 of the Indian Penal Code as also under Section 4 of the Dowry Prohibition Act and decided to issue summons against six accused persons namely, (i) Anuj Kumar Singh alias Upendra Kumar Singh (husband), (ii) Lalmuni Divi (mother-in-law) (iii) Manoj Kumar (elder brother-in-law), (iv) Krishna Rai (cousin father-in-law) (V) Anita Devi, wife of Krishna Rai (cousin mother-in-law) and (vi) Vicky Rai (son of cousin-father-in-law) and issued summons against them. Although, the complainant had impleaded Anita Devi (Nanad) in the complaint petition and had made specific allegations against her, the learned A.C.J.M. did not accept the allegations against Anita Devi and the complaint against her was rejected under Section 203 of the Cr.P.C. It is submitted that at the one hand, the learned A.C.J.M. dismissed the complaint against Anita Devi but at the same time, he decided to issue summons to these petitioners.

At the time of framing of charge, the petitioners filed an application for discharge under Section 245 Cr.P.C. These petitioners submitted that at the stage of evidence before charge, the complainant and her witnesses repeated the same general and omnibus allegations. Learned Senior Counsel points out that in course of evidence before charge, the father of the complainant did



not come forward to support the case at pre-charge stage. It is further pointed out that the sister of the complainant while deposing in course of pre-charge stage was found having something written on her hand which shows that she was a tutored witness. It is also submitted that the mother of the complainant in her deposition said that she had gone to the Sasural on her own to bring her daughter, the boy was asking to bring money and give land.

Learned Senior Counsel submits that in her deposition she has alleged demand of money against the husband and she has talked about the compromise in the Court also but in course of her cross-examination, she has categorically stated that she had not gone to the Sasural of the complainant but after sometime, she having realized her mistake, changed her statement and said that she had gone to the Sasural of the complainant. It is submitted that the other complainant witnesses have in course of their deposition at the stage of evidence before charge, merely reiterated the allegations which are centered around the husband. In fact, these witnesses have in course of their deposition not even talked about the petitioners in the Criminal Miscellaneous No. 7835 of 2018 who are living separately as per the statement of the complainant herself.

Learned Senior Counsel submits that despite the facts



that the allegations against these petitioners are totally vague and there is no material available on the record to frame charges against these petitioners, the learned S.D.J.M has vide his order dated 10.10.2017 rejected the petition for discharge. The learned S.D.J.M., Danapur, has taken a view that even if the evidences available on the record raise suspicion as to the alleged occurrence itself, still the charges may be framed. Learned Senior Counsel, therefore, submits that the learned S.D.J.M., Danapur, has himself indicated in the impugned order that the evidences of the complainant witness at the stage of evidence before charge are totally vague and create doubts over the alleged occurrence itself.

He has relied upon the judgment of the Hon'ble Supreme Court to submit that where the materials available on the record are indicating only a vague accusations against the 'kith and keen' of the husband and it seems that the alleged occurrence is itself doubtful and they have been made accused only because they happen to be the relations of the husband, this Court can interfere under Section 482 of the Cr.P.C., to quash the entire criminal proceeding.

Learned Senior Counsel has also relied upon the judgment of the Hon'ble Supreme court in the case of **Pritam Ashok Sare Phulle vs. State of Maharashtra reported in 2015 11 SCC page 769** to submit that the quashment of criminal



proceeding where the allegations regarding the family members of the husband are vague, is permissible.

On the other hand, learned counsel representing the O.P.No. 2 has filed a counter affidavit and opposed the prayer of the petitioners to set-aside the impugned order and to quash the criminal proceeding. It is pointed out by the learned counsel representing the O.P.No. 2 that during the hearing of the anticipatory bail application of the co-accused-Anuj Kumar alias Upendra Kumar Singh who is the husband, he had given an undertaking that he will keep the O.P.No. 2 with full honour and dignity as his wife. Because of this under undertaking, he was granted anticipatory bail vide order dated 07.02.2015 by the learned District and Sessions Judge, Patna.

It is submitted that pursuant to this undertaking given by the husband, the complainant was taken to her matrimonial home but without keeping the O.P. No. 2 peacefully, the accused persons including these petitioners started torturing the answering Opposite Party. The husband of the O.P. No. 2 has filed a Divorce Case being Matrimonial Case No. 685 of 2015, which is pending before the Court of learned Additional Principal Judge, Family Court, Patna. It is submitted that the learned Court below has rightly rejected the application of the petitioners for discharge and called all of them to appear for framing of charge.



In course of argument, having sensed the difficulties in opposing the applications of all the petitioners, learned counsel for O.P.No. 2 has mainly concentrated his arguments against the mother-in-law and the elder brother-in-law of O.P. No. 2. This is perhaps because learned counsel has noticed that in answer to the Court's query, the complainant has herself stated that Kirshna Prasad, his wife and sons (petitioners in second case) are living separately.

Having heard learned counsel for the parties and on perusal of the records available before this Court, this Court finds that in the complaint petition there is no allegation of demand of dowry at the time of marriage by any of the accused persons who are petitioners before this Court. In her solemn affirmation also the complainant has stated that at the time of marriage the bridegrooms' family were given gifts and she was also given gift by her family.

So far as, the petitioners in the Criminal Miscellaneous No. 7835 of 2018 are concerned, they are the cousin father-in-law, wife of the cousin father-in-law and their sons who are admittedly living separately. In this regard, the statement of the complainant in answer to the court's query would be important to take note of as under:-

“मेरे ननद की अनिता की शादी मुझसे काफी पहले



हुई थी। ननद की ससुराल बीरपुर नगमा नौबतपुर थाना मैं है। ननद को दो सन्तान है। ननद के लड़की की आयु लगभग 20 वर्ष है कृष्णा राय चचेरा ससुर तथा अनीता देवी चचेरी सास अलग रहते है। चचेरा ससुर के दो सन्तान है। बड़े पुत्र की आप 25 वर्ष है थाना में मैंने केस नहीं किया।'' (underline is mine)

As regards, Anita Devi, the complainant had made a specific statement in the complaint petition that she was living in the Sasural of the complainant and was torturing the complainant along with other co-accused persons but the learned A.C.J.M., did not believe this statement and the complaint against Anita Devi was dismissed. This Court is unable to understand as to when the identical allegations in same tone and tenor as have been made against the present petitioners have been disbelieved in respect of Anita Devi, what additional material were present before the learned A.C.J.M., Danapur to proceed against these petitioners. To this Court, it appears that the only additional fact which prevailed over the mind of the learned A.C.J.M., Danapur was that the petitioners in Criminal Miscellaneous No. 5005 of 2018, were the mother-in-law and elder brother-in-law of the complainant and they being the close family members of the husband, the Court was willing to proceed against them. Still, at least this additional fact was not available as against the petitioners in Criminal Miscellaneous No. 7835 of 2018 who are the cousin father-in-law and his family members, admittedly living separately from the



family of the husband of the complainant. One more thing to be taken note of is that in her statement on her oath, the complainant has stated that accused persons were asking for Rs.5,00,000/- so that they can purchase a separate piece of land for building their house. It is apparent on the face of the statement that such desire to have a separate piece of land to build a house from the money which the complainant was being called upon to bring could have rested only with her husband and nobody else.

The petitioners of Criminal Miscellaneous No. 7835 of 2018 were already separately living. In fact, on record there is a partition deed of the year 1993 which has not been disputed by the complainant. The partition deed shows that as back as on 15.08.1993, the two brothers, Sri Bhagwan Gope and Krishna Prasad had partitioned their own ancestral property. It bears the signature of Nathun Gope, father of Sri Bhagwan Gope and Krishna Prasad.

The materials in form of the evidence before charge are available on the record, the learned S.D.J.M., has come out with a proposition that even if the evidence of the witnesses are raising doubt over the alleged occurrence itself, there is no difficulty in framing of charge. This Court would not subscribe the view taken by the learned S.D.J.M., Danapur, in view of the judgment of the Hon'ble Apex Court which has been cited hereinabove.



It is apparent from the materials available on record in this case that the allegations against these petitioners in both the cases are totally vague and in fact doubt the alleged occurrence itself. They are being prosecuted in the case only because they happen to be the family members of the husband or co-sharer of the husband who has already partitioned and admittedly living separately. The statement of the complainant clearly stating that the petitioners in Criminal Miscellaneous No. 7835 of 2018 are living separately have been extracted by this Court to show that despite the fact that the complainant has herself stated that these petitioners are living separately, the learned Court below has proceeded against them.

In the opinion of this Court, once the learned S.D.J.M. was of the view that the evidence of the witnesses are raising doubt over the alleged occurrence, he could not have proceeded to frame charges against these petitioners as the charges cannot be framed when the allegations are totally vague and are doubting the very occurrence that too in the facts of the present case where the petitioners are facing prosecution because of a matrimonial dispute between the complainant and her husband. The husband was in a Government job and has separate arrangements is also apparent on the face of the materials available on the record. It is also admitted position that the complainant had never reported the



alleged occurrence to the police station. The husband is, however, facing trial. In the opinion of this Court, the continuation of criminal proceedings as against these petitioners is an abuse of the process of Court.

In result, the impugned order passed by the learned S.D.J.M., Danapur Civil Courts, Patna District, in Complaint Case No. 427 (C) of 2013 is hereby set-aside and the petitioners are discharged.

Both the applications are allowed in terms indicated hereinabove.

(Rajeev Ranjan Prasad, J)

R.R.Ojha.

U		T	
---	--	---	--

