

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.43999 of 2014

Arising Out of PS. Case No.-264 Year-2012 Thana- PHULWARI District- Patna

-
1. Arun Kumar Singh Son of Sri Shardanand Singh
 2. Shardanand Singh Son of Late Banarasi Rai
 3. Vidyarthi Devi Wife of Sri Shardanand Singh All resident of Vidyarthi Sadan, Chitragupt Nagar, Road No.-9, Takiapar, P.S.- Danapur, District- Patna

... .. Petitioner/s

Versus

1. The State of Bihar
2. Rubi Kumari Wife of Sri Arun Kumar Singh, D/o Sri Dhuman Rai resident of Naya Tola, P.S.- Phulwari Sharif, District- Patna

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr. Dr. Chandra Shekhar Azad
For the State	:	Mr. Dr. Rabindra Kumar APP
For the Opp. Party no.2	:	Mr. Indu Bhushan Prasad Adv.

CORAM: HONOURABLE MR. JUSTICE SANJAY PRIYA
ORAL JUDGMENT

Date : 13-07-2018

Heard learned counsel for the petitioners, learned counsel for the opposite party no.2 and learned counsel for the State.

This petition has been filed under Section 482 Cr. P.C. for quashing the order dated 20.04.2014 passed by Judicial Magistrate, 1st Class, Patna in Phulwari Sharif P.S. Case no. 264 of 2012, by which the learned Magistrate has taken cognizance against the petitioners under Section 498A of the I.P.C. and Section 3/4 of Dowry Prohibition Act.

Learned counsel for the petitioners has submitted that petitioner no.1 has performed second marriage with opposite party No.2 after the death of his first wife. The opposite party



no.2 after marriage did not live properly with him to lead conjugal life on account of which he felt cruelty and also filed a case for Divorce under Section 13 of the Hindu Marriage Act. It is further pointed out that petitioners have never committed torture with the opposite party no.2 for demand of dowry.

On the other hand, learned counsel for the opposite party no.2, has submitted that petitioners have tortured the opposite party no.2 for non- fulfillment of demand of dowry as well as ousted her from the matrimonial house. It is further submitted that Divorce case filed by the petitioner no.1 vide Matrimonial (Divorce)case no. 182 of 2011 has been dismissed by the Principal Judge, Family Court, Patna vide judgment dated 28.05. 2014.

From perusal of the complaint petition, which was sent to police station under Section 156(3) Cr.P.C., it appears that marriage of opposite party no.2 with petitioner no.1 was solemnized on 11th of March, 2011 in Shiv Temple. After marriage she went to her matrimonial house where she was tortured by husband including other in-laws for demand of Rs. one lac cash, motorcycle and one golden Chain. It further appears that when father of the opposite party no.2 came to meet her in her matrimonial house accused persons told him to



take away opposite party no.2. Thereafter, she came to her Naihar with her father. It is further alleged that accused persons kept her valuable articles as mentioned in the FIR in the matrimonial house and after some days her husband talked her on telephone to bring Rs. one lac and gold worth two bhar. Thereafter, she will be permitted to live in the matrimonial house with him.

The Complaint case was sent to the police station under Section 156(3) Cr. P.C. in which the police after investigation submitted charge sheet against the petitioners. The learned Court below on the basis of charge sheet submitted by the police took cognizance against all the petitioners .

This Court, after looking into the allegation in the complaint which was sent to the police station under Section 156(3) Cr. P.C., finds that petitioner nos. 2 and 3 are father-in-law and mother –in-law of opposite party no.2. There is general and omnibus allegation against them. It has been submitted that petitioner nos. 2 and 3 have no concern between the affairs of the wife (opposite party no.2) and petitioner no.1. Petitioner no.1 has performed second marriage with opposite party no.2 in the temple after death of his first wife. These petitioners have no concern with the affairs between opposite party no.2 and



petitioner no.1.

It is consistent view of the Hon'ble Supreme Court that continuance of criminal proceeding involving all the family members of husband when FIR does not disclose specific allegation against them will be abuse of the legal and judicial process. In the case reported in **PLJR 2013(1) SCC 10 (Geeta Mehrotra & Anr. Vs. The state of U.P. & Anr.)**, the Hon'ble Supreme Court has held that mere casual reference of names of family members in a matrimonial dispute without any allegation of their active involvement in the offence is not sufficient for taking cognizance, moreso, when tendency is to rope entire family members in matrimonial disputes; the proceeding, is liable to be quashed.

In complaint petition, there is general and omnibus allegation against petitioner nos. 2 and 3, who are father-in-law and mother-in-law of opposite party no.2. There is no any allegation of specific overt act against them. Therefore, this Court is of the view that that continuance of the criminal proceeding against petitioner nos. 2 and 3 will be mere harassment to them and abuse of the process of the Court.

Accordingly, the impugned order dated 20.04.2014 passed by J.M.Ist Class, Patna in Phulwari Sharif P.S. case no.



264 of 2012 along with entire criminal prosecution with respect to petitioner nos. 2 and 3 is hereby quashed.

So far as petitioner no.1, who is husband of the opposite party no.2 is concerned, this Court does not find any illegality in the impugned order with respect to him.

Accordingly, this Cr. Misc. petition is dismissed with respect to petitioner no.1. The Court below will proceed in the case against petitioner no.1 in accordance with law.

Petitioner no.1 is given liberty to raise all the points as raised in the present application, at the time of framing of charge, which will be considered and disposed off by the learned Court below in accordance with law without being prejudiced by this order .

This application is, accordingly, allowed in part.

(Sanjay Priya, J)

shyambihari/-

AFR/AFR	AFR
CAV DATE	N/A
Uploading Date	20/07/2018
Transmission Date	20/07/2018

