

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.41366 of 2015

Arising Out of PS. Case No.-191 Year-2013 Thana- PARSABAZAR District- Patna

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1. Chinta Devi W/o Late Mithilesh Prasad.
 2. Umesh Prasad son of Late Mithilesh Prasad.
 3. Sarswati Devi W/o Umesh Prasad.
- All resident of village- Beldari Chak, P.S.- Gauri Chak, District- Patna.

... .. Petitioner/s

Versus

1. The State of Bihar.
2. Ragni Kumari W/o Sunil Kumar, D/o Gopal Ram, presently residing at village- New Nathupur, P.S.- Parsa Bazar, District- Patna.

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr. Murari Narain Chaudhary Mr. Vijay Kumar Mr. Mohit Shrivastava
For the State	:	Mr. Shantanu Kumar (App)

CORAM: HONOURABLE MR. JUSTICE PRAKASH CHANDRA JAISWAL

ORAL JUDGMENT

Date : 26-10-2018

Heard learned counsel for the petitioners and learned 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 29.06.2015 passed by learned Judicial Magistrate First Class, Patna in Parsa Bazaar P.S. Case No. 191 of 2013, G.R. No. 5964 of 2013 whereby the learned Magistrate has taken cognizance of the offence under Sections 498-A, 494/34 of the Indian Penal Code and Section 3/4 of Dowry Prohibition Act against seven accused persons named in the charge-sheet



including the petitioners and ordered to issue summons against them.

3. Factual matrix of the case is that O.P. no. 2 (Ragni Kumari) filed Parsa Bazaar P.S. Case no. 191 of 2013 under Sections 498-A, 494/34 of the Indian Penal Code and Section 3/4 of Dowry Prohibition Act against the petitioners and four other accused persons named in the written report with the allegation in succinct, that her marriage was performed with the accused Sunil Kumar in the month of 13th June, 2010. After marriage, she went to her marital house and lived there happily for six months. Thereafter, accused persons including the petitioners started demanding Rs 1 lakh and to get the land of Bhikhachak executed in favour of her husband Sunil Kumar and on her failure to cough up their demand, they started subjecting her to various sorts of torture and finally they drove her out of her marital house and Sunil Kumar took another lady, namely, Guriya Kumari and kept her with him in the house.

4. The aforesaid case was investigated by the police and after investigation of the case I.O. submitted charge-sheet under Sections 498-A, 494/34 of the Indian Penal Code and Section 3/4 of Dowry Prohibition Act against all the seven accused persons including the petitioners and learned Magistrate



after perusing the case diary and material available on records took cognizance of the offence under Sections 498-A, 494/34 of the Indian Penal Code and Section 3/4 of Dowry Prohibition Act against all the accused persons including the petitioners vide order dated 29.06.2015.

5. It is submitted by learned counsel for the petitioners that the allegation of demanding dowry and subjecting the O.P. no. 2 to cruelty levelled against the petitioners is not specific rather general and omnibus in nature. Not a single incident has been cited in the written report making specific allegation against the petitioners. Petitioner no. 1 happens to be mother-in-law, petitioner no. 2 brother-in-law and petitioner no. 3 sister-in-law of O.P. no. 2 and they are living separately from her and her husband and they have no concern with their affairs. Hence, no offence under the aforesaid Sections is made out against the petitioners and taking cognizance of the offence against the petitioners is nothing, but an abuse of process of the Court. Hence, the impugned order is liable to be quashed. On the other hand learned APP for the State opposed the aforesaid petitions.

6. From perusal of record, it appears that the petitioner no. 1 (Chinta Devi) happens to be mother-in-law,



petitioner no. 2 (Umesh Prasad) brother-in-law and petitioner no. 3 (Sarswati Devi) sister-in-law of O.P. no. 2. From perusal of written report it appears that the allegation of demanding dowry of Rs. 1 lac and mounting pressure upon opposite party no. 2 to get the land of Bhikhachak executed in favour of her husband Sunil Kumar and subjecting her to cruelty and torture due to not coughing up of their demand levelled against the petitioners are not specific rather general and omnibus in nature. From perusal of the case diary furnished by the petitioners during the course of argument, it appears that the opposite party no. 2 in her further statement and the witnesses examined by the I.O. under Section 161 Cr.P.C. have not made any specific allegation against the petitioners regarding aforesaid dowry demand and tormenting the opposite party no. 2 rather allegations are general and omnibus in nature. There is no specific allegation of any overt act against any of the petitioners, hence in my considered opinion, it would be clear abuse of the legal and judicial process to mechanically send the petitioners to undergo trial unless of course the FIR discloses specific allegations which would persuade the court to take cognizance of the offence alleged against them. It is well settled principle that if FIR did not disclose the commission of the specific



offence by the accused, court would be justified in quashing the proceedings presenting the abuse of the process of law.

7. 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.

8. 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.

9. In view of the aforesaid facts and circumstances of the case and the aforesaid case laws, the order taking cognizance of the offence against these petitioners, in my considered opinion is nothing,



but an abuse of process of the Court. Hence, the impugned order of taking cognizance of the offence against the petitioners only is quashed and this petition is accordingly allowed.

(Prakash Chandra Jaiswal, J)

rohit/-

AFR/NAFR	AFR
CAV DATE	N.A.
Uploading Date	30-10-2018
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