

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.1725 of 2016

Arising Out of PS. Case No.-2789 Year-2011 Thana- VAISALI COMPLAINT CASE District-
Vaishali

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Swarnim Kumari D/o Jitendra Chaudhary, resident of Village Fateha, Police Station- Bachhawara, District- Begusarai, at present W/o Prabhat Kumar, resident of village Nari Kala, Police Station- Tishauta, P.O. Nari Khurd, District – Vaishali.

... .. Petitioner/s

Versus

1. The State of Bihar.
2. Smt. Kirtika Kumari W/o Prabhat Kumar, resident of Village Nari Kala, Police Station- Tishiauta, P.O Nari Khurd, District- Vaishali at present Nana Prashann Narayan Choudhary Adarsh Nagar, Road No. 3B, Gram Panchayat Dhurlakh Police Station- Samastipur Mohalla, District- Samastipur.

... .. Opposite Party/s

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Appearance :

For the petitioner	:	Mr. Sanjeev Ranjan, Advocate
For the O.P	:	Mr. Jitendra Narayan Sinha, Advocate
For the State	:	Mr. J.Upadhyay(App)

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CORAM: HONOURABLE MR. JUSTICE SANJAY PRIYA
ORAL JUDGMENT

Date : 13-09-2018

Heard learned counsel for the petitioner and learned
counsel for the State.

This petition under Section 482 Cr. P.C. has been filed
for quashing the order dated 26.3.2014 passed by SDJM,
Hajipur, in Complaint Case no. 2789 of 2011 by which learned
Magistrate has taken cognizance for the offence under Sections
498A of the I.P.C. and Sections 3 and 4 of the Dowry
Prohibition Act.



Learned counsel for the petitioner has submitted that in the complaint petition it is alleged that husband of the complainant has performed second marriage with this petitioner. Learned counsel for the petitioner has relied on the decision of the Hon'ble Supreme Court in the case of **Vijeta Gajra vs. State of NCT of Delhi reported in 2010(11) SCC 618** and the case of **U. Suvetha vs. State by Inspector of Police and Anr. 2009(6) SCC 757** and has argued that this petitioner does not belong to the family member of the husband of the complainant or any of his relative in any manner as referred in Section 498A of the IPC. Therefore, she cannot be tried for the offence under Section 498A of the IPC. Learned Counsel for the petitioner has further submitted that complainant in her SA has nowhere alleged any overt act against this petitioner.

Learned counsel for the opposite party no.2 has submitted that she has been described as wife of husband of the complainant in this petition.

This Court after hearing the parties and looking into the complaint petition as well as the SA of the complainant and statement of other witnesses find that allegation in the complaint petition against this petitioner is that the family



members were proposing to perform marriage of husband of the complainant with this petitioner. Such allegation has been made at page 6 of the complaint petition.

The SA of the complainant has been enclosed with this petition. From perusal of the aforesaid SA it appears that she has not levelled any allegation of overt act against this petitioner. She has nowhere stated that her husband has performed marriage with this petitioner. Similarly, the witnesses, namely Prasaan Narayan Choudhary, who is uncle of the complainant, and Ram Bhavan Choudhary who is grand father of the complainant have also not levelled any allegation against this petitioner. In fact, both the witnesses have not taken the name of this petitioner in their statement before the learned Magistrate during enquiry.

The Hon'ble Supreme Court in case of **U.Suvetha** (supra) has held that living with another woman may be an act of cruelty on the part of the husband for the purpose of judicial separation or dissolution of marriage but could not stretched to amount to "cruelty" under Section 498A IPC. Similarly, the Hon'ble Supreme Court in the Judgment of **Vijeta Gajra v. State of NCT of Delhi reported in (2010)11 SCC 618**, has held that "noting the specific language of the section and



the Explanation the word “ relative” would not include a paramour or concubine or so as referred to in section 498A IPC.

Therefore, impugned order passed by the learned Court below by which he has found *prima facie* against this petitioner for the offence under Section 498A I.P.C. and Section 3/4 of the Dowry Prohibition Act is not in accordance with law.

Accordingly, the impugned order dated 26.3.2014 passed by SDJM, Hajipur, in Complaint Case no. 2789 of 2011 along with entire criminal proceeding against the petitioner is hereby quashed.

This Cr. Misc. petition is, accordingly, allowed.

(Sanjay Priya, J)

shyambihari/-

AFR/NAFR	AFR
CAV DATE	N/A
Uploading Date	25.9.2018
Transmission Date	25.9.2018

