

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Writ Jurisdiction Case No.2903 of 2017

Arising Out of PS.Case No. - 17 Year- 2016 Thana - Mahila District- PATNA

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1. Pradeep Kumar Singh, Son of Mr. Hari Shankar Singh,
2. Hari Shankar Singh, Son of Late Ram Pariksha Singh,
3. Mr. Nirmala Singh, Wife of Hari Shankar Singh,
All are resident of 12/215-R-5 Laxumanpuram Colony, Bajardiha road, P.S.-
Bhelupur, District- Varanasi (U.P.).

.... Petitioner/s

Versus

1. The State of Bihar through D. M Patna.
2. Annu Singh, daughter of Brajendra Prasad, resident of D/142 P.C. Colony,
P.O.- Lohia Nagar, P.S.- Kankarbagh, Kankarbagh, District- Patna.

.... Respondent/s

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Appearance:

For the Petitioners: Mr. Sandeep Kumar,
Mrs. Archana Sinha and
Mr. Alok Kumar Shahi, Advocates.

For the State: Mr. Saroj Kumar Sharma, AC to AAG 3.
For the Informant: Mr. Anil Kumar Sinha, Advocate.

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD

ORAL JUDGMENT

Date: 07-05-2018

The three petitioners initially moved this Court for quashing of the First Information Report being Mahila P.S. Case No. 17/2016 (G.R. No. 2350/2016) registered under Sections 498A and 34 of the Indian Penal Code read with Sections 3/4 of the Dowry Prohibition Act. Petitioner no. 1 is the husband of the respondent no. 2 whereas petitioners no. 2 and 3 are the father-in-law and the mother-in-law respectively.

2. It is the case of the respondent no. 2 that after her divorce with her first husband, namely, Dipak Kumar Singh, her



marriage was fixed with petitioner no. 1 on 26.11.2015 in Markandey Mandir, Varanashi. It is alleged that her husband had made the father of the respondent no. 2 to believe that his family members would have no objection on the respondent no. 2 being a divorcee but suddenly the petitioner no. 1 gave a telephone call to the father of the respondent no. 2 and informed him that the marriage cannot be solemnized on 26.11.2015 because his Bank A/C was attached by the Income Tax Department and a sum of Rs. 10 lakhs is required for purpose of marriage expenses. It is alleged that on this information the father of the respondent no. 2 gave a sum of Rs. 10 lakhs out of which Rs. 8,50,000/- was deposited in the Bank A/C of a family friend of her husband and her father gave gifts in a sum of Rs. 1,01,000/- in cash, one golden chain, one golden ring and also gave to the respondent no. 2 Rs. 50,000/- in cash, chain, finger ring, Payal, etc. The marriage was solemnized on 26.11.2015 in Mahadev Mandir at Varanashi in presence of Maikey people and Sasural people in accordance with Hindu rites and customs.

3. It is further alleged that after her marriage she came to her Sasural and there she found that Sasural people were talking something but she was unable to understand as to what they were planning. It is alleged that her husband left her at Patna Maikey on 01.01.2016 and told her that he was going to Jaipur. Her husband



promised her to come back on 14.01.2016 to take her with himself but thereafter her husband told her over telephone to demand a sum of Rs. 1 lakh in cash and the amount kept in fixed deposit in her name and only when the same will be given he will take her with himself. It is stated that on this her father tried to convince her husband but he did not agree. It is alleged that with effect from 26.01.2016 her husband put her telephone no. and residential telephone no. on the Reject Call Mode. She alleged that when she tried to give a call to her mother-in-law and father-in-law they were not picking up her call, therefore, she alleged that being harassed she came back to Varanashi with her father and brother-in-law (Bahnoi).

4. It is also alleged that they were not allowed to enter in the house by her Sasural people, thereafter, she had submitted a written complaint vide letter no. DR-322 dated 04.03.2016 to Mahila Police Station. Her husband was called upon to place his case in Mahila Police Station within three days but he did not turn up. In the last line of her complaint she requested the Officer-in-charge of Mahila Police Station, Gandhi Maidan, Patna to register a case against her husband, mother-in-law and father-in-law and to initiate legal action against them.

5. It appears that during pendency of the Writ Application, on filing of a chargesheet by police, the learned Judicial Magistrate 1st



Class, Patna took cognizance of the offences U/S 498A/34 IPC read with Sections 3/4 of the Dowry Prohibition Act and all the accused persons were summoned. Petitioner no. 1 was granted anticipatory bail by this Hon'ble Court vide order passed in Cr. Misc. No. 30417/2016 dated 17.04.2017 on taking note of the submission made by the learned counsel for the petitioner no. 1 that he would pay a sum of Rs. 2,500/- per month to the informant from May, 2017 subject to any order being passed in matrimonial and maintenance proceedings.

6. It appears that petitioner no. 1 failed to comply with the order and moved the Hon'ble Supreme court against part of the order by which he was directed to pay Rs. 2,500/- towards maintenance subject to final order in maintenance proceedings. The Hon'ble Supreme Court having noted the contentions of the parties observed that **“It would be more appropriate for the petitioner to approach the High Court again and make an application in this regard.”** During this period, since petitioner no. 1 failed to comply with the condition, a warrant of arrest was being issued against him but during pendency of the Writ Application he has paid the outstanding amount @ Rs. 2500/- per month through a Demand Draft which was handed over to the learned counsel representing the petitioner no. 2 in this case.

7. The order taking cognizance has been brought on record



by way of a Supplementary Affidavit. Again, vide I.A. No. 1402/2018 the order taking cognizance dated 28.08.2017, which is Annexure-5 to the Supplementary Affidavit, has been challenged with a prayer seeking amendment in the prayer portion of the Writ Application.

8. In course of argument learned counsel representing the petitioners initially attempted to press the Writ Application for quashing of the First Information Report and the order taking cognizance on behalf of the three writ petitioners but soon after some argument having noticed the difficulty in pressing the application on behalf of the husband (petitioner no. 1) learned counsel for the petitioners made a statement at the Bar that he would not press this application insofar as it relates to the husband (petitioner no. 1); he has sought to confine his prayers with respect to the father-in-law (petitioner no. 2) and the mother-in-law (petitioner no. 3). In view of this stand of the learned counsel representing the petitioners, the present application insofar as it relates to the husband (petitioner no.1) is dismissed as not pressed.

9. The Writ Application and the amendment in the prayer portion challenging the order taking cognizance are now confined to the father-in-law (petitioner no. 2) and the mother-in-law (petitioner no. 3) respectively.

10. Learned counsel representing the remaining petitioners



has read out the First Information Report whereunder at no place there is any whisper of allegation against the father-in-law and the mother-in-law. Learned counsel submits that a bare reading of the F.I.R., without adding or subtracting anything out of it, it may be found that prior to fixing of the marriage no talk was alleged to have taken place with these petitioners. There is a categorical statement that whatever talks or promises or demand had taken place were allegedly between the father of the respondent no. 2 and her husband (petitioner no. 1). The amount of Rs. 8,50,000/- has not been paid in the A/C of these petitioners, the allegation is that her husband had told her father that the marriage cannot be solemnized on 26.11.2015 because his Bank A/C was attached and a sum of Rs. 10 lakhs was required for marriage expenses. There is no allegation at all that at any point of time, either before marriage or after marriage, these petitioners had demanded any money. From a bare perusal of the F.I.R. it appears that even after the marriage the respondent no. 2 had not resided with these petitioners which is apparent from her own statement that she tried to talk to her mother-in-law and father-in-law over telephone, meaning thereby that the respondent no. 2 was not residing with her mother-in-law and father-in-law.

11. In the nature of the allegations learned counsel submits that this Court will find that it is one of the cases where the mother-in-



law and the father-in-law are being prosecuted only because they happen to be the near relations and kith and kin of the husband. It is thus the submission of the learned counsel for the petitioners that the present application as also the amendment application are fit to be allowed as against the father-in-law and the mother-in-law.

12. On the other hand, learned counsel representing the respondent no. 2 even though vehemently argued against the husband (petitioner no. 1) but when the learned counsel for the petitioners made it clear that he would not press his application with regard to the petitioner no. 1, learned counsel for the respondent no. 2 has fairly come out with a stand that the F.I.R., on the face of it, is not making out any allegation of cruelty or demand of dowry against the father-in-law and the mother-in-law of the respondent no. 2, he, however, hastened to add that this does not mean that the father-in-law and the mother-in-law may be absolved from their responsibility, if not legal, a social responsibility to ensure that the respondent no. 2 is not harassed. He has thus submitted that this Court is not required to interfere with the First Information Report or the order taking cognizance against the father-in-law and the mother-in-law.

13. Having heard learned counsel for the petitioner and learned counsel representing the respondent no. 2 and after going through the contents of the written complaint filed by the respondent



no. 2 which has given rise to the present case, this Court is of the considered opinion that the allegations mentioned in the written complaint nowhere alleges anything against the father-in-law and the mother-in-law, who are petitioner no. 2 and 3 respectively in this case. On the contrary, the allegations made by the respondent no. 2 are clearly showing that the entire negotiations of marriage had taken place between the father of the respondent no. 2 and the petitioner no. 1. The demand of money for expenses is also alleged against the petitioner no. 1 only. No act of torture or harassment has been alleged against the father-in-law and the mother-in-law in the First Information Report. In fact, the entire written complaint talks of allegations against petitioner no. 1 but, in the last line of the complaint, only a request has been made to the Officer-in-charge to register a case against the father-in-law and the mother-in-law also.

14. In the opinion of this Court it is one of those cases where the father-in-law and the mother-in-law are being prosecuted only because they are the parents of the petitioner no. 1, there being no allegations at all against the father-in-law and the mother-in-law in the First Information Report, no material could be brought to the notice of this Court to demonstrate that the order taking cognizance and issuance of summons against the father-in-law and the mother-in-law may be allowed to sustain.



15. In result the prayer in the Writ Application as also the amendment praying for quashing of the First Information Report and the order taking cognizance and issuance of summons insofar as they relate to the father-in-law and the mother-in-law respectively are allowed.

16. The order taking cognizance as also issuance of summons against petitioner no. 2 and 3 is hereby set aside, the prosecution as against them is quashed. The application is partly allowed.

(Rajeev Ranjan Prasad, J)

Dilip, AR

AFR/NAFR	NAFR
CAV DATE	N/A
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