

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.5795 of 2018

Arising Out of PS.Case No. -265 Year- 2012 Thana -MUZFFARPUR COMPLAINT CASE District-
MUZAFFARPUR

=====

Rajkeshwar Prasad @ Rajkeshwar Sah @ Rajkishore Sah S/o Late
Kishunchand Sah, R/o Village- Kali Tola, ward No.24, Farbisganj, P.S.-
Farbisganj, District- Araria.

.... Petitioner/s

Versus

1. The State of Bihar.
2. Chandrabhushan Prasad S/o Late Mahendra Prasad, R/o Village + Post-
Tehwara, P.S.- Katra , District- Muzaffarpur.

.... Opposite Party/s

=====

Appearance :

For the Petitioner/s : Mr. Jitendra Narain Sinha, Adv.

For the Opposite Party No.1: Mr. Arun Kumar Pandey, APP

For the Opposite Party No.2: Mr. Pramod Rajpati, Adv.

=====

CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN
PRASAD

ORAL ORDER

3 25-10-2018 This application has been preferred for quashing of

the order dated 17.07.2012 passed in Complaint Case No.265 of

2012 (Tr. No.1151 of 2017) by the learned Sub-Divisional Judicial

Magistrate, East, Muzaffarpur. By the impugned order, the learned

Judicial Magistrate-1st Class has been pleased to take cognizance

of the offences under Sections 498A and 406 of the Indian Penal

Code and decided to issue summons to the petitioner.

A perusal of the complaint petition would show that

this petitioner happened to be a distant relation of the husband of

the sister of opposite party no.2 who had allegedly acted as a

mediator in the marriage of the opposite party no.2 with one



Pradeep Kumar (accused no.1). According to the allegations in the complaint petition Dr. Pratibha Kumari (sister of complainant), who was at the relevant time working as Women Scientist in the National Institute of Pathology, Safdarjang Hospital Campus, New Delhi, was married with accused no.1 at Muzaffarpur on 13.07.2005. This petitioner (accused no.5) and his wife (accused no.6), who were Mama and Mami respectively of accused no.1, had acted as a mediator. It is alleged that on the very first night of marriage the accused no.1 alleged that brother of his wife had committed a fraud because he had not given a four-wheeler to him. It is alleged that after Bidagari the accused persons had kept Pratibha Kumari at Forbesganj in the house of accused nos.5 and 6 because the village of accused no.1 is in Maoist affected area and he had not got residential quarter at the place where he was working as Engineer. Admittedly, the accused no.1 took his wife to Delhi where she stayed for one week and thereafter his wife went to Chennai for her work.

Learned counsel for the petitioner submits that in the entire complaint petition there is no allegation of commission of any act of torture against this petitioner. It is submitted that the entire allegations are vague and the only conclusion which may be reached by looking into the complaint petition is that a



matrimonial discord has taken place between the wife and husband, as a result thereof the brother of the wife has filed a complaint petition at Muzaffarpur against the entire family members and even this petitioner who is a distant relation has been roped in the complaint because he had acted as a mediator in the marriage.

Learned counsel has taken this Court through the deposition of the Pratibha Kumari (enquiry witness no.1) and submits that in her deposition she has not made any allegation against this petitioner. It is submitted that the learned S.D.J.M., East, Muzaffarpur has acted in a most mechanical and routine manner in issuing summons against the petitioner. He has also relied upon judgments of the Hon'ble Supreme Court in the cases of **Pritam Ashok Sadaphule Vs. State of Maharashtra** reported in (2015) 11 SCC 769 and **Kailash Chandra Agrawal & Anr. Vs. State of U.P. & Ors.** reported in (2014) 16 SCC 551. On the strength of these judgments, learned counsel submits that continuation of the present proceeding against the petitioner is only an abuse of the process of the Court and hence order taking cognizance and issuance of summons against the petitioner is liable to be quashed.

On the other hand, learned counsel representing the



complainant-opposite party no.2 has opposed the application of the petitioner. It is submitted that the learned S.D.J.M. has rightly issued summons to the petitioner as there are sufficient materials against him to proceed. It is submitted that at this stage no interference is called for with the order taking cognizance and issuance of summons.

Learned counsel for the State is present.

Considering the facts and circumstances of the case as also the judicial pronouncements on the subject, this Court is of the considered opinion that neither in the complaint petition nor in the deposition of the witnesses particularly that of the sister of the complainant Pratibha Kumari any statement or material which may warrant issuance of process against this petitioner. There is no allegation of causing any act or omission of torture against the sister of the complainant and the only reason for which this petitioner has been implicated in the case is that he had acted as a mediator in the marriage which was solemnized between the sister of the complainant and one Pradeep Kumar. This petitioner happens to be a distant relation.

In the facts and circumstances of the case, this Court finds that it is a fit case in which in order to secure ends of justice and to prevent abuse of the process of the Court the inherent



jurisdiction of this Court under Section 482 Cr.P.C. is required to be invoked.

In the opinion of this Court, the prosecution of this petitioner is only an abuse of the process of the Court, hence, the impugned order taking cognizance in so far as it relates to the petitioner is hereby quashed and the application is allowed.

(Rajeev Ranjan Prasad, J)

Arvind/-

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

