

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.5329 of 2019

Arising Out of PS. Case No.-497 Year-2018 Thana- ANDHRATHARHI District- Madhubani

1. Umesh Jha S/o Late Kari Jha Resident of Village-Bidulia, P.S Andhra Tharhi, Dist. Madhubani.
2. Triveni Devi W/o Umesh Jha Resident of Village-Bidulia, P.S Andhra Tharhi, Dist-Madhubani
3. Dilip Kumar Jha S/o Davanand Jha Resident of Village-Satghara, P.S. Babu Barhi, Distt. Madhubani
4. Asha Devi W/o Dilip Kumar Jha Resident of Village-Satghara, P.S. Babu Barhi, Distt. Madhubani

... .. Petitioner/s

Versus

1. The State Of Bihar
2. Punita Jha W/o Mukesh Jha Resident of village Bidulia, P.S Andhra Tharhi, Distt. Madhubani, at present Gauri Nath Nagar Near Heart Hospital, Mangrauri, P.S Raj Nagar, Distt. Madhubani

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr.Kripa Nand Jha
For the Opposite Party/s	:	Mr. Murari Narian Chaudhary
		Mr. Mohit Shrivastava
For the State	:	Mrs. Anita Kumari Singh, APP

CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH
ORAL JUDGMENT

Date : 09-12-2019

The present petition has been filed for quashing the order taking cognizance dated 10.9.2018 passed in CR. No. 497 of 2018 by the learned SDJM, Madhubani whereby and whereunder cognizance has been taken against the petitioners under Sections 498A/34 of the Indian Penal Code.

2. The case of the complainant i.e. the Opposite Party No. 2 herein as per the complaint is that the marriage of the



complainant with her husband, namely, Sri Mukesh Kumar Jha had taken place on 24.2.2012 as per the Hindu Rites and Customs. It is the case of the complainant that after 11 days, when the complainant had gone to in-laws' place, the accused persons had started demanding a sum of Rs. 5,00,000/- by way of dowry and since she could not fulfill the said demand for dowry, the accused persons had assaulted her, as also had stopped her meals. The complainant has further stated in her complaint that the accused persons had conspired and ousted the complainant as also her husband out of the matrimonial home, whereafter they started living at Madhubani along with two children in a rented house. Lastly, it is alleged in the complaint case that the accused persons had then come at the rented house of the complainant and her husband at Madhubani where also, they had engaged in abusing the complainant and her husband.

3. It appears that the learned court below had recorded the statement of the complainant on oath, whereupon, E.W.1, namely, Rita Devi was examined. Yet another witness i.e. the father of the complainant was also examined by the learned court below.

4. The learned court below by the impugned order dated 10.9.2018 has though found the case to be prima facie true



against the petitioners herein, however, the accused no. 3 to 6 i.e. the brother-in-law, sister-in-law, maternal aunt and Mauseera brother of the husband of the victim lady i.e. the complainant have been left off. This order dated 10.9.2018 is under challenge before this Court in the present proceedings.

5. The learned counsel appearing for the petitioners has submitted that there is a general and omnibus allegation levelled against the petitioners and the fact is that the husband of the complainant has not been made an accused. It is further submitted that a bare perusal of the cross-examination of the complainant before the learned trial court held on 20.7.2018 would show that the complainant has said that her father-in-law is a teacher and since he says that the complainant had got no share in the property, she has filed the complaint case. Thus, the contention of the learned counsel for the petitioners is that the present case has been filed with ill motive and in a mala fide manner. It is further submitted that the petitioner no. 1 is working as a teacher in Nagaland and it is very highly improbable to believe that he would come to Madhubani and harass the complainant. Lastly, it is submitted that the entire complaint is mala fide, hence, is required to be quashed.

6. At this juncture, the learned counsel for the petitioners



has relied upon a judgment rendered by a coordinate Bench of this Court dated 6.10.2017 passed in Criminal Miscellaneous No. 17578 of 2014, paragraph nos. 2, 4 and 5 whereof are reproduced hereinbelow:-

“2. It has been submitted that petitioners are father-in-law, mother-in-law and maternal uncle-in-law of the Informant. There is general and omnibus allegation against them. Counsel for the petitioners has placed reliance on the judgment of the Hon’ble Supreme Court in the case of Geeta Mehrota Vs. State of UP reported in 2013 (1) PLJR 10 and also in the case of Preeti Gupta Vs. State of Jharkhand reported in (2010) 7 SCC 667 and submitted that criminal proceeding against the petitioners is liable to be quashed since only bald, general and omnibus allegation has been levelled against them. Instant case has been instituted on the basis of complaint filed by the Complainant, which was sent to the P.S. under Section 156(3) Cr. P. C. The Complainant/Informant has alleged that after performing arrange marriage with accused No.1 on 06.02.2013 she went to her Sasural where she was tortured for demand of dowry



and, ultimately, she was ousted from the house as mentioned, in detail, in the Complaint Petition.

4. From perusal of the Complaint Petition, it appears that general and omnibus allegation has been levelled against the petitioners, who are father-in-law, mother-in-law, and maternal uncle-in-law of the Complainant/Informant.

5. In the judgments relied upon by the counsel for the petitioners, Hon'ble Supreme Court, has held that criminal proceeding is liable to be quashed when general and omnibus allegation has been levelled against the in-laws and other relatives of husband of the Complainant."

7. The learned counsel for the petitioners has further relied on a judgment rendered by a coordinate Bench of this Court in Criminal Miscellaneous No. 25832 of 2014, which is dated 11.10.2017 and it would be relevant to reproduce paragraph nos. 10 and 11 hereinbelow:-

10. This Court has considered the submissions made at the Bar. The Court has also perused the judgment of the co-ordinate bench of this Court in case of Dharmendra Kumar Jha & Ors. (elder brother and



his wife) Vs. The State of Bihar & Anr., reported in 2017 (1) PLJR 926. The case against the elder brother and his wife was quashed as it was found from the unimpeachable documents brought before the Court that those allegations were false. The coordinate bench has also relied upon two decisions of the Hon'ble Supreme Court reported in (2008) 13 SCC 678 and (2012) 10 SCC 741. The relevant paragraphs are quoted hereunder:

“14. The learned counsel for the petitioners has cited order of the Hon'ble Supreme Court reported in Para Para 22 of (2008) 3 SCC 678 as follows:

“Ordinarily, a defence of an accused although appears to be plausible should not be taken into consideration for exercise of jurisdiction under Section 482. The High Court at that stage would not ordinarily enter into a disputed question of fact. It, however, does not mean that documents of unimpeachable character should not be taken into consideration at any cost for the purpose of finding out as to whether continuance of the criminal proceedings would amount to an abuse of the



process of court or that the complaint petition is filed for causing mere harassment to the accused. Although a large number of disputes should ordinarily be determined only by the civil courts, but criminal cases are filed only for achieving the ultimate goal, namely, to force the accused to pay the amount due to the complainant immediately. The courts on the one hand should not encourage such a practice; but, on the other, can not also travel beyond its jurisdiction to interfere with the proceeding which is otherwise genuine. The courts cannot also lose sight of the fact that in certain matters, both civil proceedings and criminal proceedings would be maintainable.”

“16.The Hon’ble Supreme Court in a decision reported in Paras 14,15, 18 to 20 and 24 to 28 of (2012) 10 SCC 741 has come to a conclusion that:

“Though the contents of the complaint made out a prima facie case against the husband of Respondent 2 wife and some other family members, but no such case was made out against the appellant-accused. There were no specific allegations against the



appellant-accused (sister and brother of the husband) so as to make them liable for bickering between Respondent 2 wife and her husband. There was no specific allegation against the appellant-accused that they demanded any dowry from Respondent 2. Casual reference to a large number of members of the husband's family without any allegation of active involvement would not justify taking cognizance against them and subjecting them to trial. Respondent 2 wife had obtained an ex parte divorce decree against her husband. This was also a relevant fact. Under these conditions, the High Court erred in not considering the entire circumstances of the case with regard to the appellant-accused. It disposed of the matter only on the issue of territorial jurisdiction without even looking at the other issues raised. Though it was justified in not deciding the issue of territorial jurisdiction under Section 482 Cr.P.C. but it failed to apply its mind to the case and determine whether the appellant-accused be subjected to trial. The High Court ought to have considered that even if the trial



court had the jurisdiction to hold the trial, the question still remained as to whether the trial against the appellant brother and sister of the husband was fit to be continued and whether that would amount to abuse of process of court. As the contents of the FIR indicated that the appellant-accused were casually referred to and no prima facie case was made out against them, in the absence of specific allegations, criminal proceedings against them are quashed without remanding the matter to High Court for reconsideration.”

11. In view of the unimpeachable materials on the record showing that the petitioner no. 1 is a married citizen of Nepal and is living there since the year 2003 after her marriage with her husband Arvind Kumar Chaudhary and that in the F.I.R. also there is no specific allegation of commission of any overt act against her as also that there is no specific allegation of over act against the mother-in-law and the demand of dowry is not attributed to her, this Court comes to a definite conclusion that this a case of false implication of each and every member of the



family of the husband and, that is how, these two petitioners came to be implicated in the present case. The Court is of the view that further continuance of the prosecution against these two petitioners would only be an abuse of the process of Court.

8. Yet another judgment referred to by the learned counsel for the petitioners is the one rendered by a coordinate Bench of this Court on 29.10.2018 passed in Criminal Miscellaneous No. 34147 of 2017, relevant paragraphs whereof are reproduced hereinbelow:-

“It is submitted that Annexure-2 is the petition of divorce filed by the husband of the complainant-opposite party no.2 in the court of learned Principal Judge, Family Court, Katihar. It is further submitted that the learned Sub-Divisional Judicial Magistrate while taking cognizance of the offence under Section 498A of the Indian Penal Code has acted in a routine and mechanical manner and has not even recorded that there are sufficient materials in terms of Section 204 Cr.P.C. to proceed against these petitioners. Learned senior counsel has relied upon the 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 other hand, learned counsel representing the complainant-opposite party no.2 submits that the learned SDJM has found a prima-facie case against all the accused persons and has rightly issued summons to them. Learned counsel submits that at this stage no interference is required. It is submitted that at this stage of summoning of the accused, learned SDJM is not required to deal with the allegations made in the complaint petition against each and every accused and, therefore, no fault may be found with the order of the learned SDJM so as to warrant interference.

After hearing learned counsel for the parties and on perusal of the records, this Court finds that so far as mother-in-law is concerned, she has been made accused by vaguely referring to an occurrence which has taken place at Malda. According to complainant-opposite party no.2 while she got



prepared to go to Kali-sthan, two elderly people came and they indulged in making filthy comments. At this stage, according to the complainant, the accused no.2 was not there, the allegation is that when she went in search of accused no.2 she could not be found and thereafter the complainant returned back on her own. The accused no. 2 is sister-in-law and not mother-in-law. In the entire complaint petition in so far as the allegations against these petitioners are concerned, are totally vague and have been made in a most casual and cryptic manner. The manner in which the complaint petition has been filed admittedly five months after the complainant had spent in her Maik and then when she received notice of the divorce case, this Court is of the considered opinion that the petitioner nos. 1 to 6 have been made accused in the complaint petition only because they happen to be the close kith and kin/family members of the husband of the complainant-opposite party no.2.

The Hon'ble Apex Court has on many occasions dealt with the cases in which the entire family



members of the husband are made accused without there being any allegation of commission of an overt act or cruelty/torture against them. In the case of Pritam Ashok Sadaphule(supra), the Hon'ble Apex Court has taken note of the growing tendency among the complainant to implicate each and every family members of the husband."

9. Per contra, the learned counsel for the complainant i.e. the Opposite Party No. 2 has supported the impugned order taking cognizance dated 10.9.2018 and has submitted that there is no infirmity in the same.

10. I have heard the learned counsel for the parties and perused the materials on record. It is apparent from the statement made by the complainant on oath before the learned court below, specifically in her cross-examination dated 20.7.2018, that she has filed the connected case only because her father-in-law tells her that she has got no share in his property. Thus, I find that the present case has not been filed on account of her being subjected to cruelty by the petitioners on account of non-fulfillment of the demand for dowry but with ill motives and malicious intentions. Thus, this Court is of the view that the ingredient required for constituting an offence under



Section 498A of the Indian Penal Code is not made out and as such, the learned S.D.J.M., Madhubani has illegally taken cognizance under Section 498A of the Indian Penal Code.

11. Another aspect of the matter is that from a bare perusal of the complaint petition, it appears that a general and omnibus allegation has been levelled against all the accused persons and since the accused nos. 3 to 6 to the complaint petition have been let off by the learned court below, the same treatment was required, as far as the rest of the accused persons are concerned and the learned SDJM, Madhubani could not have discriminated as far as passing of the order of cognizance against the petitioners is concerned qua the other accused persons. In fact, a bare perusal of the law laid down by the Hon'ble Apex Court, as also the law laid down by the coordinate Benches of this Court in the judgments referred to hereinabove would show that a criminal proceeding is liable to be quashed in case, general and omnibus allegations have been levelled against the in-laws and other relatives of the complainant / victim lady. Thus, this Court finds that a bare perusal of the complaint and the evidence led on behalf of the complainant would show that there are insufficient materials to proceed against the petitioners herein and it appears that the SDJM, Madhubani has taken cognizance



of the offence under Section 498A/34 of the Indian Penal Code in a casual and mechanical manner and has decided to issue summons to most of the family members of the husband of the complainant illegally.

12. Having regard to the facts and circumstances of the case and for the reasons mentioned hereinabove, the present petition stands allowed and the order dated 10.9.2018 passed by the Sub-Divisional Judicial Magistrate, Madhubani qua the petitioners herein stands quashed.

(Mohit Kumar Shah, J)

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AFR/NAFR	AFR
CAV DATE	NA
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