

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.21927 of 2015

Arising Out of PS. Case No.-333 Year-2013 Thana- PATNA COMPLAINT CASE District-
Patna

Abhishek Kumar, S/o Late Raghuvir Sharan Srivastav, Resident of Mohalla -
Diwan Mohalla, Pato Ki Bagh, Hamam Par, P.S. - Khajekalla, District - Patna
... .. Petitioner/s

Versus

1. The State of Bihar
2. Tanuja Srivastav, W/o Abhishek Kumar, D/o Janardan Prasad, Resident of
Mohalla - Diwan Mohalla, Pato Ki Bagh, Hamam Par, P.S. - Khajekalla,
District - Patna, at present Badi Patan Devi Road, P.S. - Alamganj, District -
Patna

... .. Opposite Party/s

Appearance :

For the Petitioner	:	Mr. Vinod Pandey, Advocate
For the O.P. No. 2	:	Mr. Markandeya Singh, Advocate
		Mr. Anil Kumar, Advocate
		Mr. Chandra Moleshwar, Advocate
For the State	:	Mr. Shyam Kumar Singh, A.P.P.

CORAM: HONOURABLE MR. JUSTICE BIRENDRA KUMAR
ORAL JUDGMENT

Date : 16-08-2019

Heard learned counsel for the parties.

2. The petitioner has challenged the complaint case as well as order of cognizance dated 18.12.2014 passed, by the learned Sub-Divisional Judicial Magistrate, Patna City, in Complaint Case No. 333 of 2013 whereby cognizance has been taken by the learned court below for offences under Section 498(A) of the Indian, Sections 3 and 4 of the Dowry Prohibition Act.

3. The challenge is on the ground that (i) complaint case does not disclose any offence (ii) petitioner had lodged earlier case



of divorce against opposite party no. 2-the complainant vide Matrimonial Divorce Case No. 447 of 2012 in the court of learned Principal Judge, Family Court, Patna City and the complainant had already appeared in that case, therefore, the present criminal prosecution is just to wreak the vengeance.

4. Learned counsel for the complainant submits that charges have already been framed in this case, hence, the stage of the trial has proceeded ahead. If the accused persons does not choose to further cross-examine the prosecution witnesses already examined before charge, the final result of the trial may be declared in judgment. Moreover, none of the aforesaid ground of challenge are prima facie made out.

5. According to complaint petition, the complainant was married with the petitioner on 09.05.2009. Within a week of her marriage and stay in the matrimonial house, all the accused persons started demanding execution of sale deed of the property standing in the name of the mother of the complainant or payment of rupees fifteen lacs. On expression of inability, the accused were abusing her and assaulting her off-and-on, rather the family members were threatening that the husband would marry with another lady to fulfill the demand of dowry. The complaint petition further refers about a matrimonial case which was surreptitiously



filed to get an ex parte decree for facilitation of another marriage. On 20.03.2013, the complainant was finally expelled from her matrimonial house.

6. Since the complaint petition apparently discloses commission of cognizable offence, it cannot be quashed. The summoning order has been passed after finding a prima facie case after inquiry under Section 202 Cr.P.C., hence, the same cannot be disturbed only on the basis of probable defence of the accused that the complaint case was offshoot of the matrimonial case brought by the petitioner against opposite party no. 2.

7. From the contention of the parties, one thing is evident that matrimonial discord is there whatever reason be for that matrimonial discord between the two spouse. The allegation of demand of dowry and torture cannot be set aside at the threshold. It would be matter of trial whether the allegations are genuine or not or whether the same are reliable or not.

8. Hence, I do not find any merit in this application. Accordingly, it is dismissed as devoid of any merit.

(Birendra Kumar, J)

Kundan/-

AFR/NAFR	N.A.
CAV DATE	N.A.
Uploading Date	22.08.2019
Transmission Date	22.08.2019

