

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No. 33076 of 2016

Arising Out of Complaint Case No.-4C Year-2011 Thana- MUNGER COMPLAINT CASE
District- Munger

1. Gulab Yadav, S/o Late Hari Yadav.
2. Tara Devi W/o Gulab Yadav.
3. Ajay Kumar Yadav @ Bablu Kumar Yadav S/o Sri Gulab Yadav. All resident of Village- Champachak, P.S. Tentia Bumper, District-Munger.

... .. Petitioner/s

Versus

1. The State of Bihar
2. Renu Devi W/o Bablu Kumar Yadav @ Ajay Kumar Yadav D/o Rajendra Yadav Presently residing at Bangawan, P.S.- Harpur, District-Munger.

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr. Altamish, Advocate
For the State	:	Mr. Suresh Prasad Singh, A.P.P.

CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN
AMANULLAH

ORAL JUDGMENT

Date : 04-04-2019

Heard learned counsel for the petitioners and learned
A.P.P. for the State.

2. The petitioners have moved the Court under Section
482 of the Code of Criminal Procedure, 1973 for the following
relief:

*“That this application is being filed for
quashing of the order taking cognizance dated
15.12.11 passed in Complaint Case No. 04C/11 by
the Sub Divisional Judicial, Magistrate Munger by
which the Sub Divisional Judicial, Magistrate
Munger has been pleased to take cognizance Under
Section 498A I.P.C. and 3/4 of Dowry Prohibition*



Act and the said case is pending before the learned Sub-Divisional Judicial Magistrate, Munger.”

3. The opposite party no. 2, who is the wife of the petitioner no. 3 has filed the complaint case in which the Court below has taken cognizance under Section 498A of the Indian Penal Code and 3/4 of the Dowry Prohibition Act.

4. The allegation is that the petitioners were consistently torturing the opposite party no. 2 for dowry and that her signature was forcibly taken by them along with other persons and that the husband had solemnized second marriage.

5. Learned counsel for the petitioners submitted that the allegations are totally false. It was submitted that prior to the filing of the complaint, the opposite party no. 2 had executed an affidavit on 22.09.2010, in which she has accepted that she was living happily with the petitioners and that she was not having good health and also that because of the same she could not bear a child and she insisted that her husband marry again. Learned counsel submitted that soon thereafter, this false complaint has been filed on 03.01.2011. It was submitted that the petitioner no. 3 has filed Matrimonial Dispute Case No. 7 of 2016, before the Principal Judge, Family Court, Munger on 08.01.2016 under Section 9 of the Hindu Marriage Act for Restitution of Conjugal Rights. It was submitted that in the said case, the order dated



19.04.2016 records that both had agreed to live happily and that the wife would file a joint petition in the criminal case praying not to proceed with the case till further application.

6. Learned A.P.P. submitted that the cognizance taken by the Court below is fully justified. It was submitted that in the complaint, there is specific allegation of torture and demand of a motorcycle and chain, and of forcibly getting blank papers signed by her. Learned counsel submitted that four witnesses have supported the prosecution case and, thus, there is no infirmity in the order taking cognizance.

7. Having considered the facts and circumstances of the case and submissions of learned counsel for the parties, the Court does not find any merit in the present application.

8. From the materials brought on record in the present application itself, the entire defence of the petitioners gets demolished. First of all, the affidavit which is alleged to have been affirmed by the opposite party no. 2 dated 22.09.2010 paints a rosy picture of her matrimonial life where she states that she was very happy living with her husband and her in-laws and because of her illness she could not conceive and also that she had asked her husband to marry again. This type of an affidavit itself exposes the *mala fide* on the part of the petitioners, as no wife is required to



give an affidavit before any authority with regard to she being treated well and being happy with her husband and in-laws. Thus, it clearly shows that a record was being created. This compared to the statement made in Matrimonial Case No. 7 of 2016 filed seeking Restitution of Conjugal Rights by the husband of the opposite party no. 2 i.e., petitioner no. 3 makes the said case totally an eyewash for creating a record to show that his intention is to keep the opposite party no. 2. However, the true intention gets exposed upon going through the averments made in the petition. In the whole petition, the entire responsibility and blame is put on the opposite party no. 2 and she is said to have behaved badly and also abused the petitioners and even her parents and other relatives were involved in such bad behaviour and that she never wanted to live in the matrimonial home. These two things cannot exist at the same time. Moreover, the affidavit being made in the matrimonial home and kept by the petitioners, clearly indicates that there was threat and coercion. Also, in the order dated 19.04.2016, on which learned counsel for the petitioners has placed much emphasis, itself speaks of the claim of the opposite party no. 2 that her husband has performed second marriage. This has not been denied in the present application. Thus, there cannot be any question of the opposite party no. 2 going back to the matrimonial home and



living there as a 2nd lady when her husband has already married another lady, as it is but natural, that the opposite party no. 2 shall not be treated well.

9. Thus, from the entire facts and circumstances, the Court finds that the allegation of torture and maltreatment of the opposite party no. 2, not only appears to be correct, but it is also clearly indicative that the petitioners had a well laid out strategy, inasmuch as, before the second marriage an affidavit was got affirmed by the opposite party no. 2 praising the petitioners and in fact showing that it was the opposite party no. 2, who had forced her husband to marry again, but when such marriage took place and she was turned out of the matrimonial home, she has filed the present complaint case, and, as a counterblast, a petition has been filed for Restitution of Conjugal Rights, in which the opposite party is shown in a completely different picture. Thus, the Court finds that by subsequent conduct and in view of what has been stated hereinabove, *prima facie* and tentatively, the allegations made against the petitioners cannot be said to be either false or frivolous or without any basis. On the contrary, in the opinion of the Court, such allegations, to a large extent stands corroborated by the conduct of the petitioners themselves and the materials on record, and, thus, all the more matters are required to be gone into



in a full fledged trial where all the parties shall have full opportunity to place materials in support of their case.

10. As far as the contention of learned counsel for the petitioners that in the matrimonial case she has agreed not to proceed further in the criminal case, is of absolutely no value, for the reason, that even if she had agreed to give a chance to the petitioners, as per the order recorded, such agreement of the opposite party no. 2 was only till her further application. This does not compel her not to proceed with the present case or to withdraw the same.

11. In any view of the matter, such observation in the order dated 19.04.2016 cannot be of any help to the petitioners and of any disadvantage to the opposite party no. 2.

12. For reasons aforesaid, the application stands dismissed.

(Ahsanuddin Amanullah, J.)

P. Kumar

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