

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.25389 of 2019

Arising Out of PS. Case No.-810 Year-2014 Thana- VAISALI COMPLAINT CASE District-
Vaishali

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1. Surendra Tiwary @ Surendra Tiwari Son of Late Ramnandan Tiwari Resident of Village- Keshrawan Dih, P.S.- Kurhani, District- Muzaffarpur.
 2. Pankaj Tiwary Son of Surendra Tiwary @ Surendra Tiwari Resident of Village- Keshrawan Dih, P.S.- Kurhani, District- Muzaffarpur.
 3. Chandan Tiwary Son of Surendra Tiwary @ Surendra Tiwari Resident of Village- Keshrawan Dih, P.S.- Kurhani, District- Muzaffarpur.
 4. Ranjita Devi Wife of Pankaj Tiwari Resident of Village- Keshrawan Dih, P.S.- Kurhani, District- Muzaffarpur.

... .. Petitioner/s

Versus

1. The State of Bihar
2. Soni Kumari Wife of Prabhat Tiwari and daughter of Late Kamleshwar Sharma Resident of Village- Keshrawan Dih, P.S.- Kurhani, District- Muzaffarpur, at present residing at Village- Sambhopatti, P.S.- Mahua, District- Vaishali.

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Sanjeev Kumar
For the Opposite Party/s : Mr. Ashok Kumar Singh, A.P.P.

CORAM: HONOURABLE MR. JUSTICE PRAKASH CHANDRA JAISWAL

ORAL JUDGMENT

Date : 09-05-2019

Heard learned counsel for the petitioners and
learned APP for the State.

2. This application under Section 482 of the Code of Criminal Procedure has been filed for quashing the order dated 13.03.2019 passed by Sub-Divisional Judicial Magistrate, Vaishali at Hajipur in Complaint Case no. 810(C) of 2014, whereby the learned Magistrate has rejected the discharge



petition filed by the petitioners under Section 245 Cr.P.C.

3. Factual matrix of the case is that O.P. no. 2 Soni Kumari filed Complaint Case no. 810 of 2014 against the petitioners and four other accused persons as named in the complaint petition under Sections 147, 323, 504, 498A, 379 of the Indian Penal Code and Section 3/4 of Dowry Prohibition Act with the allegation, in succinct, that marriage of the complainant (O.P. No. 2) was performed with the accused Prabhat Tiwari. After marriage, she went to her marital house, but the accused persons started subjecting her to various sorts of torture over demand of Rs. 5 lacs for doing business and finally they drove her out of her marital house snatching her belonging and thrashing her and extended threatening of dire consequences in case of regression to her marital house without taking money. Then she rushed to her maternal uncle and on call of her uncle, accused no. 1 to 4 of the complaint petition arrived at the house of her maternal uncle and put the aforesaid demand. On hectic persuasion made by her uncle, they refused to budge and even slated and assaulted her and her maternal uncle and extended threatening.

4. During the course of inquiry, O.P. no. 2 examined herself on S.A. and also examined three witnesses.



5. Learned Magistrate after perusing the complaint petition, S.A., inquiry witnesses and finding making out *prima facie* case took cognizance of the offence under Sections 498A of the Indian Penal Code and Section 4 of D.P. Act against the petitioners. Later on, five witnesses were examined by the complainant before charge. Subsequently, Pushpa Devi and Kiran Devi, who happens to be married sister-in-law (Nanad) and Swati Priya Bhagni of the complainant filed discharge petition under Section 245 Cr.P.C and after considering the facts and circumstances of the case and materials available on record, the learned Magistrate allowed the discharge petition vide order dated 30.11.2018. Thereafter, the petitioners filed petition under Section 245 Cr.P.C. for their discharge on 11.01.2019. But, after hearing the parties, learned Magistrate vide impugned order dismissed the aforesaid discharge petition treating the said discharge petition as review petition and not maintainable on the premise that earlier while considering the discharge petition of the Pushpa Devi and Ors., entire facts and circumstances and all aspects of the case was considered and petitioners were directed to appear before the court for framing of charge.

6. It is submitted by learned counsel for the petitioners that the petitioner no. 1 happens to be father-in-law,



petitioner no. 2 is the Bhaisur, petitioner no. 3 Dewar and petitioner no. 4 is the elder Gotni of the complainant. They have neither made any demand nor ever subjected the complainant to any sort of torture nor drove her out of her marital house over the said demand nor slated and assaulted and threatened the informant and her maternal uncle arriving at the house of her maternal uncle. They are living separately and have no concern with the affairs of the complainant and her husband. Allegation levelled against the petitioners is not specific rather general and omnibus in nature and on similar footing, Nanad and Bhagini of the complainant have been discharged by the learned Magistrate. But, the learned Magistrate rejected the discharge petition of these petitioners treating the same as review petition of its earlier order against the actual state of affairs. Hence, the said order is illegal and is liable to be quashed.

7. On the other hand, learned APP for the State opposed this quashing petition.

8. From perusal of record, it appears that earlier a discharge petition was filed by the Nanad and Bhagini of the complainant on 21.08.2018. The learned Magistrate considering the aforesaid discharge petition and facts and circumstances of the case and material



available on record allowed the same vide order dated 30.11.2018. But, when these petitioners filed the discharge petition on 11.01.2019, the same was rejected by the court below finding it to be petition filed for review of its aforesaid earlier order with observation that the entire facts and circumstances and all aspects of the case was considered on earlier occasion and petitioners were directed to appear before the court for framing of charge. From perusal of the order dated 30.11.2018, passed by learned Magistrate, it appears that the evidence and facts and circumstances of the case was considered by the learned Magistrate only *in re* to the discharge petition filed by Nanad and Bhagini of the complainant, namely, Pushpa Devi, Kiran Devi and Swati Priya and not the case of the petitioners. Facts and circumstances of each case and *in re* to each accused depends upon its own merit and petitioners should also be given opportunity of hearing, but without giving them opportunity of hearing, the learned Magistrate turned down their discharge petition in utter violation of principle of natural justice. Moreover, from perusal



of the order dated 30.11.2018, it appears that no where in the said order, the learned Magistrate has directed the petitioners to appear before him in person for framing charge turning down their prayer ever made by them.

9. Having regard to the facts and circumstances of the case, the order dated 13.03.2019 passed by Sub-Divisional Judicial Magistrate, Vaishali at Hajipur in Complaint Case no. 810(C) of 2014 is hereby quashed and the case is remitted back to the court below to pass fresh order, considering the facts and circumstances and material available on record *in re* to the said petitioners. accordingly this petition is allowed.

(Prakash Chandra Jaiswal, J)

rohit/-

AFR/NAFR	AFR
CAV DATE	N.A.
Uploading Date	13.05.2019
Transmission Date	13.05.2019

