

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.1448 of 2017

Arising Out of PS. Case No.-903 Year-2016 Thana- PATNA COMPLAINT CASE District-
Patna

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1. Aashish Kumar Dey @ Aashish Dey s/o Amal Kumar Dey
2. Amal Kumar Dey s/o Late Sundar Lal Dey
3. Mira Dey w/o Amal Kumar Dey
All r/v 142, Gangotri Nagar, Havelia, P.S.-Jhunsi, Allahabad, PO.- Jhunshi
U.P.

... .. Petitioner/s

Versus

1. The State Of Bihar
2. Jaya Dey d/o Sujay Ghosh, r/m-Chitkohra Punjabi Colony, P.S. -
Gardanibagh, District - Patna

... .. Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. T.N. Maitin, Sr. Adv.
For the Opposite Party/s : Mr. Jharkhandi Upadhyay, APP

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI
ORAL JUDGMENT

Date : 28-02-2019

Heard learned counsel for the petitioners as well as
learned A.P.P.

Petitioners have challenged the order dated
22.08.2016 passed by Kumari Vijaya, Sub-Divisional Judicial
Magistrate, Patna whereby and whereunder all the petitioners
have been summoned to face trial for an offence punishable
under Sections 498(A) of the Indian Penal Code and section 4 of
the Dowry Prohibition Act.

While assailing the order impugned, the learned
counsel has raised two issues, The first one is Annexure-2 a
petition having filed on behalf of O.P. No. 2/complainant



divulging the fact that there happens to be an undertaking at the end of her husband/petitioner no. 1 that he will entertain her with full dignity whereupon, she left her Maika to join hands with petitioner no. 1 and, as per submission of learned counsel for the petitioners, she is residing with her husband though, no proof has been given in support thereof, even while identifying her status as O.P. No. 2 under the instant petition her present address has been shown to be along with her father and not at least A/P residing along with her husband.

So far another submission is concerned, it has been submitted that there happens to be omnibus allegation and further, under the garb of principle having promulgated and which has been recited repeatedly that the family members should not be asked for forface trial in a proceeding under Section 498(A) of the Indian Penal Code, when they carry omnibus allegation and to substantiate the same, referred **2015(2) P.L.J.R. 605 as well as A.I.R. 2013 S.C. 181.**

The conduct of petitioners is found very much amphisemous. On account of absence of at present address of O.P. No. 2, at least depicting that she was/is residing with the petitioner no. 1 having full address that of petitioners suggests otherwise than whatever been pleaded more particularly in the



background of the fact that the Annexure-2 happens to be dated 28.11.2016 and during the intervening period much water has flown. Furthermore, for delay in filing of instant petition without any exposure, is an additional theme.

In the aforesaid background, it looks better to direct the parties to appear before the learned lower court with O.P. No. 2 if she resides along with them, where the learned lower court will perform the legal obligation in accordance with sections 244, 245, 246 of the Cr.P.C. During consideration of the same, if the Opposite Party No. 2/Complainant affirms the contents of Annexure-2, then in that circumstance, the learned lower court will pass appropriate order on the same date in the background of the fact that the dispute relates with matrimonial dispute. The points whatever been raised at the end of petitioners is being dealt with in the aforesaid way, as, any kind of consideration on merit will adversely affect, either way.

Hence, in terms thereof, instant petition is disposed of.

(Aditya Kumar Trivedi, J)

vinita/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	08.03.2019
Transmission Date	08.03.2019

