

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**CRIMINAL MISCELLANEOUS No. 3253 of 2015**

Arising Out of P.S. Case No.-139 Year-2010 Thana- BARHARA KOTHI District- Purnea

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1. Md. Rauf @ Abdul Rauf, Son of Md. Yunus.
  2. Md. Yunus Son of Late Md. Sudhi.
  3. Samina Khatoon Wife of Md. Yunus.
  4. Md. Taslim Son of Md. Sudhi.
  5. Md. Amin Son of Md. Taslim.
  6. Bibi Rukshana Khatoon Wife of Md. Amin.
- All are Residents of Village Murballa, P.S. Barhara, District- Purnea.

... .. Petitioner/s

Versus

1. The State of Bihar
2. Zainab Khatoon Daughter of Zfauddin and Wife of Md. Rauf, Resident of Village Murballa, Police Station Barhara, District Purnea.

... .. Opposite Party/s

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**Appearance :**

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| For the Petitioner/s         | : | Mr. Nafisuzzoha,<br>Mr. Firoz Ahmad and<br>Mr. Md. Manzer Karim, Advocates |
| For the Opposite Party No. 2 | : | Dr. Bidhu Ranjan and<br>Mr. Dwij Raj, Advocates                            |
| For the State                | : | Mr. Md. Arif, APP                                                          |

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**CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN  
AMANULLAH**

**ORAL JUDGMENT**

**Date : 26-04-2019**

Heard learned counsel for the petitioners; learned APP  
for the State and learned counsel for the opposite party no. 2.

2. The petitioners have moved the Court under Section  
482 of the Code of Criminal Procedure, 1973 (hereinafter referred  
to as the 'Code') for the following relief:

*“That, this application is for quashing  
the cognizance order dated 13.12.2011 of the*



*C.J.M., Purnea passed in Barhara P.S. Case No. 139 of 2010 G.R. No. 2863 of 2010 by which cognizance has been taken for the offence under Section 498(A)/34 of the Indian Penal Code and 3/4 D.P. Act against the petitioners in the circumstances set forth below.”*

3. The allegation against the petitioners is of demand of dowry.

4. Learned counsel for the petitioners submitted that the present case is *mala fide* for the purpose of harassing the petitioners and also patently illegal. It was submitted that earlier the opposite party no. 2 had filed Complaint Case No. 2677 of 2010 before the Chief Judicial Magistrate, Purnea on 02.08.2010 against the petitioners under Sections 323, 504 and 498A of the Indian Penal Code and 3/4 of the Dowry Prohibition Act, 1961. It was submitted that in the complaint case allegations are with regard to snatching of necklace, earrings, assault and demand of dowry of Rs. 50,000/-. Learned counsel submitted that the FIR was filed on 23.11.2010, which also speaks of assault, abuse and demand of dowry of Rs. 1,50,000/- It was submitted that in the complaint filed, the allegations under Sections 323, 504, 498A of the Indian Penal Code and 3/4 of The Dowry Prohibition Act, 1961, whereas in the present FIR it is only under Sections 498A/ 34 of the Indian Penal Code and 3/4 of the Dowry Prohibition Act. Learned counsel submitted that filing of the complaint case is



three and a half months prior to filing of the FIR, but such fact has not been mentioned in the FIR and moreover, in the complaint the allegation is that the demand of dowry was of Rs. 50,000/- whereas in the FIR the amount of dowry sought has been enhanced to Rs. 1,50,000/-. Learned counsel submitted that in the complaint case, the Court below has convicted some of the accused. Learned counsel submitted that based on the same allegations and after trial there being conviction of some of the accused, the present case also basically raising the same accused could not be allowed to continue as it would be an abuse of the process of the Court.

5. Learned APP fairly submitted that based on the same allegations, there could be multiple cases.

6. Learned counsel for the opposite party no. 2 submitted that the two cases are not the same, inasmuch as, in the present case, there is allegation of attempt to murder of the opposite party no. 2, which was not there in the complaint case. However, on a query of the Court that even in the FIR, the allegation is not of any attempt of murder but only an allegation that the opposite party no. 2 had been informed that her father-in-law has sent 7 and 8 unknown persons with arms to kill the opposite party no. 2 and her father, how could it be said to be an



attempt to commit murder and also moreso, in view of the fact that in the complaint case, the allegations were more wide as compared to the present FIR and further that after filing of the complaint the opposite party no. 2 had not gone back to the matrimonial home so as to give any fresh or different cause of action and also that such fact of filing of complaint was suppressed in the FIR, learned counsel could not give any answer.

7. Having considered the facts and circumstances of the case and submissions of learned counsel for the parties, the Court finds that a case for interference has been made out.

8. Learned counsel for the petitioners has rightly pointed out that the opposite party no. 2 having filed the complaint in which there were widespread allegations and then filing an FIR after three and a half months without even indicating filing of the complaint case and with lesser allegations and also no fresh or different cause of action having arisen as opposite party no. 2 had not gone back to the matrimonial home after filing of the complaint case, clearly the present FIR cannot be permitted in law. The same, thus, is an abuse of the process of the Court which is required to be prevented by exercise of inherent power of the Code under Section 482 of the Code.



9. Accordingly, the application is allowed. The entire criminal proceeding arising out of Barhara PS Case No. 139 of 2010 (G.R. No. 2863 of 2010) pending before the Court below at Purnea including the order dated 13.12.2011, by which cognizance has been taken, stands quashed.

**(Ahsanuddin Amanullah, J.)**

Anand Kr.

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