

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.20679 of 2015

Arising Out of PS. Case No.-457 Year-2014 Thana- GAYA COMPLAINT CASE District-
Gaya

-
1. Tara Khatoon wife of late Syed Mahfuz -UI- Haque
 2. Sayed Fazal UI-Haque son of Late Syed Mahfuz-UI-Haque, Both Resident of Village- Abgila, P.S - Muffasil, district- Gaya
 3. Gazala Praveen wife of Nasibul Hussain Both Resident of Village- Abgila, P.S - Muffasil, district- Gaya

... .. Petitioner/s

Versus

1. The State Of Bihar
2. Sayeda Zainab wife of Sayed Kashif UI- Haque Resident of Village- Abgila, P.S - Muffasil, district- Gaya

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr.Gautam Kumar Kejriwal, Adv
	:	Mr. Alok Kumar Jha, Adv.
	:	Mr. Pawan Kumar Singh, Adv
For the State	:	Mr. Shyam Kumar Singh, APP
For the Opposite Party No.2:	:	Mr.Madanjeet Kumar, Adv

CORAM: HONOURABLE MR. JUSTICE BIRENDRA KUMAR
ORAL JUDGMENT

Date : 13-08-2019

Heard learned counsel for the parties.

2. The petitioners are accused in Complaint Case No.457 of 2014 wherein cognizance has been taken for offences under Sections 498A and 406 I.P.C. as well as under Section 4 of Dowry Prohibition Act on the complaint of opposite party No.2- Sayeda Zainab, wife of Sayed Kashif Haque.

3. The relations of the husband are petitioners herein. They have challenged the order of cognizance dated 02.03.2014 on



the ground that the entire general and omnibus allegation is result of malicious and vexatious prosecution arising out of dispute of compatibility between the husband and wife.

4. Contention is that even in the complaint petition, it is mentioned that opposite party No.2 got suspicion that her husband had some affairs with the known girl and they were bent upon to marry with each other. When she complained to the family members, i.e., the petitioners, they simply set aside her grievance by saying that the husband of opposite party No.2 is doing job abroad. Hence, affairs with other girl is natural phenomenon. Next contention is that husband has already brought Matrimonial Suit No.361 of 2013 before the learned Principal Judge, Family Court, Gaya for restitution of conjugal rights under Section 281 of the Mohammedan Law. After filing of that petition and knowledge of the same to opposite party No.2, the present complaint petition was filed in the year 2014. In the complaint petition itself, it is off and on stated that all the accused person including the petitioners in 'one voice' demanded more dowry and teased her by words for non-fulfillment of dowry demand. It is specifically mentioned that on 07.03.2011, money was paid to the bank account of the husband. Contention is that the husband might have been asking for money and money was paid to him but the petitioners had no



concern with them. Contention is that the rising trend of implicating the family members whenever matrimonial dispute arises was taken note of by the Hon'ble Supreme Court in the case of **Preeti Gupta & Anr Vs. State of Jharkhand and Anr, (2010)7 SCC 667**, when the criminal proceeding was quashed against the relations of the husband.

5. On the other hand learned counsel for the opposite party No.2 submits that at the stage of cognizance, meticulous appreciation of evidence is not permissible and once court has taken cognizance, this Court should not interfere in exercise of extraordinary jurisdiction under Section 482 Cr.P.C. in a casual manner. Each and every case cannot, as a matter of rule, be labelled with false and malicious implication of family members.

6. So far factual aspect of this case is concerned, two things are apparent. First, that husband brought a suit for restitution of conjugal right against opposite party No.2 prior to filing of the present complaint petition which goes to show that matrimonial discord was going on between the spouse. Second that the allegation of demand of dowry and torture is general and omnibus by making allegation that all demanded more dowry in one voice. The husband of opposite party No.2 is not a petitioner



herein in whose bank account money was deposited by the father of opposite party No.2.

7. In the case of **Preeti Gupta (Supra)**, the Hon'ble Supreme Court noted that *"it is a matter of common experience that most of these complaints under Section 498A IPC are filed in the heat of the moment over trivial issues without proper deliberations. We come across a large number of such complaints which are not even bona fide and are filed with oblique motive. At the same time, rapid increase in the number of genuine cases of dowry harassment is also a matter of serious concern".* *"Unfortunately, at the time of filing of the complaint the implications and consequences are not properly visualised by the complainant that such complaint can lead to insurmountable harassment, agony and pain to the complainant, accused and his close relations."*

8. Para 35 to 37 of the judgment are reproduced below:

35. *"The ultimate object of justice is to find out the truth and punish the guilty and protect the innocent. To find out the truth is a herculean task in majority of these complaints. The tendency of implicating husband and all his*



immediate relations is also not uncommon. At times, even after the conclusion of criminal trial, it is difficult to ascertain the real truth. The courts have to be extremely careful and cautious in dealing with these complaints and must take pragmatic realities into consideration while dealing with matrimonial cases. The allegations of harassment of husband's close relations who had been living in different cities and never visited or rarely visited the place where the complainant resided would have an entirely different complexion. The allegations of the complaint are required to be scrutinized with great care and circumspection.

36. *Experience reveals that long and protracted criminal trials lead to rancour, acrimony and bitterness in the relationship amongst the parties. It is also a matter of common knowledge that in cases filed by the complainant if the husband or the husband's relations had to remain in jail even for a few days, it would ruin the chances of amicable*



settlement altogether. The process of suffering is extremely long and painful.

37. Before parting with this case, we would like to observe that a serious relook of the entire provision is warranted by the legislation. It is also a matter of common knowledge that exaggerated versions of the incident are reflected in a large number of complaints. The tendency of over implication is also reflected in a very large number of cases. The criminal trials lead to immense sufferings for all concerned. Even ultimate acquittal in the trial may also not be able to wipe out the deep scars of suffering of ignominy. Unfortunately a large number of these complaints have not only flooded the courts but also have led to enormous social unrest affecting peace, harmony and happiness of the society. It is high time that the legislature must take into consideration the pragmatic realities and make suitable changes in the existing law. It is imperative for the legislature to take into consideration the informed public opinion and



*the pragmatic realities in consideration and
make necessary changes in the relevant
provisions of law.”*

9. Considering the factual matrix of this case as discussed above as well as the observation of the Hon’ble Supreme Court in **Preeti Gupta Case (Supra)**, in my view, compelling the petitioners to face trial would amount to abuse of the process of the Court in view of the vague allegations levelled against the petitioners who are relations of the husband. Hence, the impugned order and entire subsequent proceeding arising out of the impugned order stands quashed and this application stands allowed.

(Birendra Kumar, J)

Nitesh/-

AFR/NAFR	NAFR
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