

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.3887 of 2015

Arising Out of Case No.-26018(C) Year-2014 Thana- PATNA COMPLAINT CASE District-
Patna

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1. Dr. Rajesh Paswan son of Ram Lochan Sharan
 2. Ram Lochan Sharan son of Late Hemant Paswan
 3. Smt. Niru Devi wife of Ram Lochan Sharan
All resident of village- Azad Chauk, Gangjala, P.S. & District- Saharsa
 4. Diwakar Paswan@Diwakar Prasad son of Ram Swaroop Paswan
 5. Rinku Devi@Kalpana Kumari wife of Diwakar Paswan@Diwakar Prasad
Both R/o village- Chausa, Singheshwar Asthan, P.S and District-
Madhepura.

... .. Petitioner/s

Versus

1. The State Of Bihar
2. Smt. Maheshwar Kumar Puja Wife of Dr. Rajesh Paswan D/o Maheshwar
Kumar, R/o Village- N.T.P.C Appartment, Phase-1, Ashiyana Nagar, P.S-
Rajeev Nagar, District- Patna.

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr. N. K. Agrawal, Sr. Advocate with Mr. Bidhu Ranjan, Advocate
For the State	:	Mr. Jharkhandi Upadhyay, APP
For the O.P. No. 2	:	Mrs. Adity Hansaria, Advocate

CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH
ORAL JUDGMENT

Date : 07-05-2019

Heard Mr. N. K. Agrawal, learned senior counsel along
with Mr. Bidhu Ranjan, 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 for the following
relief:



“That this application is being for setting aside the order dated 28.8.2014 passed in Complaint Case No. 26018 (C) of 2014 whereby and whereunder cognizance has been taken against the petitioners for the offence under Sections 498A, 323, 504 of the Indian Penal Code and issued summons by Smt. Sangeeta Rani, J.M. 1st Class, Patna.”

3. The allegation against the petitioners in Complaint Case No. 26018 (C) of 2014, filed by the opposite party no. 2, is of torture, demand of dowry and turning her out the matrimonial home. The opposite party no. 2, is the wife of petitioner no. 1, and the other petitioners are relatives of petitioner no. 1.

4. Learned counsel for the petitioners submitted that there is general and omnibus allegation against all the family members and the complaint case has been filed with *mala fide* intention. It was submitted that, at best, it is the petitioner no. 1, being the husband of opposite party no. 2, who can be held responsible for any differences or maltreatment to his wife, but with regard to the other petitioners, only because they are relatives of petitioner no. 1, making them accused is clearly an abuse of the process of the Court. Learned counsel submitted that the sister and the brother-in-law of petitioner no. 1 have no role in the matrimonial dispute and, thus, the Court may grant them indulgence. It was further submitted that the petitioners no. 4 and 5 were not living in Saharsa.



5. Learned counsel for the opposite party no. 2 submitted that from the allegations made in the complaint, it is clear that the same are quite natural and furthermore, the petitioners no. 4 and 5 are living in the matrimonial house of the opposite party no. 2 and the allegation is that because of their interference, the atrocities on the opposite party no. 2 were aggravated. It was submitted that there was interference on the part of the petitioners no. 4 and 5 in the matter of demand of dowry from the father of the opposite party no. 2. Learned counsel submitted that the matter deteriorated when the opposite party no. 2 gave birth to a female child. Learned counsel submitted that at the time of seeking bail in the present case before the High Court, the same was allowed on the condition that the petitioner had agreed before the Court to take the opposite party no. 2 along with the minor child and to keep them with full dignity and honour. However, when she went to the matrimonial home, she found that the petitioner no. 1 had married another woman. It was submitted that the same is also based on official documents. The attention of the Court in this regard was drawn to the information received under the Right to Information Act by the opposite party no. 2 from the office of the Superintendent, Central Prison, Purnea under memo no. 918 dated 04.04.2018 with which copies of the



employee information and declaration of assets and liabilities of petitioner no. 1 have been furnished, which have been filled up and signed by him, and in which the spouse name is shown as Supriya Shalini and not the opposite party no. 2. Learned counsel further informed the Court that, as of now, trial has begun and two prosecution witnesses have already been examined and from the defence side, out of five, two witnesses have been examined

6. Learned APP submitted that from the allegations, the sequence of events are quite natural and the role of all the persons, including father-in-law, mother-in-law and the sister and her husband appeared to be natural, inasmuch as, they are the guardians of the house and when the married sister also lives in the house of her parents, there is bound to be interference by her. It was submitted that all the more reason that the petitioners should face trial, as it is only at that stage they can prove their innocence by adducing evidence and bringing on record materials in their favour. Learned counsel submitted that for the purpose of taking cognizance, which is under challenge in the present application, the Court has only to see as to whether, *prima facie*, on the basis of materials before the Court, the offence is made out. It was submitted that based on the averments made in the complaint and statement of the witnesses examined, cognizance has been taken.



7. Having considered the facts and circumstances of the case and submissions of learned counsel for the parties, the Court does not find any ground to interfere in the order impugned taking cognizance. Moreover, as the trial has progressed substantially and the prosecution has closed its evidence and even from the side of the defence, two out of five witnesses have already been examined are further reasons for the Court to be persuaded not to interfere in the matter at this stage.

8. Needless to indicate that the parties during trial have full opportunity to prove their case by bringing on record relevant materials and adduce evidence in their favour.

9. For reasons aforesaid, the application stands dismissed.

(Ahsanuddin Amanullah, J)

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