

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.913 of 2017

Arising Out of PS. Case No.-229 Year-2015 Thana- PANCHRUKHI District- Siwan

1. Rajesh Yadav
2. Rakesh Yadav @Rakesh Kumar Both sons of Sri Shankar Yadav alias Ramesh yadav.
3. Shankar Yadav alias Ramesh Yadav Son of Late Bijli Yadav.
4. Rajmati Devi Wife of Sri Shankar Yadav alias Ramesh Yadav.
5. Riki Devi @ Rinku Devi
6. Sangita Kumari Both(5 to 6) daughtert of Sri shankar Yadav alias Ramesh Yadav.
7. Basudeo Yadav Son of Late Inderdeo Yadav.
8. Chait Yadav @ Chait Chaudhary
9. Umesh Yadav Son of Khub Lal Yadav. all resident of Village- Survala, Police Station- Gautam Budh Nagar, District- Siwan.

... .. Petitioner/s

Versus

1. State Of Bihar
 2. Sanju Kumari Wife of Rajesh Yadav Resident of Village- Survala, Police- Station- Gautam Budh Nagar, District- Siwan , Presently Resident of Village- Hardiya, Police Station- Pachrukhi , District- Siwan Opposite Party/s
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Appearance :

For the Petitioner/s : Mr.Shambhu Prasad Yadav, Adv
For the Opposite Party/s : Mr. Chandrasen Prasad Singh, APP

CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI
ORAL ORDER

4 31-01-2019 Heard learned counsel for the petitioners, learned
APP as well as learned counsel appearing for OP No.2.

2. After having begotten two children and was carrying pregnancy, the informant, Sanju Kumari who was being treated with cruelty since before for procurement of Rs.1 Lakh in cash and a Bullet Motorcycle, was lastly kicked out. After having been operated upon on 17.05.2014 on account of precarious condition, her uterus was removed and then, when she approached to her Sasural on 27.09.2014, she was not at all allowed to stay, as a result of which, prosecution was filed on



22.08.2015 seeing no alternative.

3. From the record, it is also evident that husband had filed petition for divorce bearing Divorce Suit No. 190/2016. It is also evident that petitioner (husband) was granted provisional bail by this court under Cr. Misc. No. 41481/2016 vide order dated 27.09.2016 (Annexure-A) wherein it has been observed as follows:-

“The provisional bail of the petitioner will be confirmed by learned court below in three eventualities (i)if the matrimonial harmony is substantially restored, (ii) if the informant fails to appear before the learned court below or (iii) if the informant gets reluctant to reconcile the issue”.

4. Both the parties have agreed upon that the husband could not be able to get his bail confirmed on one pretext or the other.

5. It has been submitted at the end of the petitioners that petitioner no.1 is the husband, petitioner no.2 is Devar, petitioner no.3 is father-in-law, petitioner no.4 is mother-in-law, petitioner no.5 and 6 are sisters-in-law, petitioner no.7 is a stranger to the family while petitioner no.8 is cousin father-in-law and petitioner no.9 is maternal father-in-law. Furthermore, there happens to be omnibus allegation against them. It has also been submitted that informant has got an employment after her



marriage at her Sasural and she is discharging her duty from her Naihar without any hitch and hindrance. Side by side, she also happens to be at fault as she did not care to come to her Sasural in order to sort out the differences. It has also been submitted that after concluding the investigation, charge-sheet was submitted only against the husband, Rajesh Yadav and in-laws, Shankar Yadav, Rajmati Devi, that means to say, petitioner nos. 2,5,6,7,8 and 9 were not sent up for trial but the learned lower court differing from the opinion of the police, took cognizance of offence and summoned those petitioners also.

6. That being so, at least those petitioners should be allowed to be exonerated from the trial by way of setting aside the order impugned to their interest.

7. Learned counsel representing OP No.2 has submitted that the FIR is not supposed to be an encyclopedia giving minute to minute details of the occurrence. It happens to be mere a kind of information with regard to commission of offence irrespective of its nature whether cognizable or non cognizable. Apart from this, it has also been submitted that from perusal of the order impugned, it is evident that the learned lower court had properly scrutinized the materials available in the case diary while summoning the remaining petitioners apart



from husband and father, mother-in-law having been charge-sheeted and referred paragraphs-2, 6, 7 and 12 of the case diary where-under witnesses have put allegation against them apart from husband and in-laws.

8. The Hon'ble Apex Court happens to be very much sensitive with regard to human behaviour where-under the whole family members including kith and kin are being falsely implicated in revengeful manner without having specific allegation with regard to their role during course of commission of occurrence and that happens to be reason behind that times without number it has been held that otherwise than the family members if they do not have specific allegation against themselves relating to demand, torture or anyway assisting, abating the husband or in-laws during course of commission of the offence, the prosecution against them should be quashed.

9. In ***Ramesh & Ors v. State of T.N. as reported in (2005) 3 SCC 507***, it has been observed as follows:-

“6. Before we proceed to deal with the two contentions relating to limitation and territorial jurisdiction, we would like to consider first the contention advanced on behalf of the appellant-Gowri Ramaswamy. Looking at the allegations in the F.I.R. and the contents of charge-sheet, we hold that none of the alleged offence, viz., [Sections 498-A, 406](#) of the I.P.C. and [Section 4](#) of the Dowry Prohibition Act are made out against her. She is the married sister of the informant's husband who is undisputedly living in



Delhi with her family. Assuming that during the relevant time, i.e., between March and October, 1997, when the 6th respondent (informant) lived in Mumbai in her marital home, the said lady stayed with them for some days, there is nothing in the complaint which connects her with an offence under [Section 498-A](#) or any other offence of which cognizance was taken. Certain acts of taunting and ill-treatment of informant by her sister-in-law (appellant) were alleged but they do not pertain to dowry demand or entrustment and misappropriation of property belonging to the informant. What was said against her in the F.I.R. is that on some occasions, she directed the complainant to wash W.C. and she used to abuse her and used to pass remarks such as "even if you have got much jewellery, you are our slave." It is further stated in the report that Gowri would make wrong imputations to provoke her husband and would warn her that nobody could do anything to her family. These allegations, even if true, do not amount to harassment with a view to coercing the informant or her relation to meet an unlawful demand for any property or valuable security. At the most, the allegations reveal that her sister-in-law Gowri was insulting and making derogatory remarks against her and behaving rudely against her. Even acts of abetment in connection with unlawful demand for property/dowry are not alleged against her. The bald allegations made against her sister-in-law seem to suggest the anxiety of the informant to rope in as many of the husband's relations as possible. Neither the F.I.R. nor the charge-sheet furnished the legal basis to the Magistrate to take cognizance of the offences alleged against the appellant Gowri Ramaswamy. The High Court ought not to have relegated her to the ordeal of trial. Accordingly, the proceedings against the appellant Gowri Ramaswamy are hereby quashed and her appeal stands allowed."

10. After going through the written report, it is evident that there happens to be omnibus allegation against the



petitioners. From the order impugned, it is evident that after concluding the investigation, only husband and father-in-law, mother-in-law were charge-sheeted while remaining were not sent up for trial. However, differing therefrom, the learned lower court found the sufficient material against them also and for that referred paragraphs-2, 6, 7 and 12 of the case diary which has not been controverted at the end of the petitioners.

11. Consequent thereupon, the instant petition sans merit and is accordingly, dismissed. The stay, so granted to the petitioners vide order 06.04.2017 stands, hereby, vacated.

(Aditya Kumar Trivedi, J)

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