

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.2568 of 2017

Arising Out of PS. Case No.-301 Year-2016 Thana- PATNA COMPLAINT CASE District-
Patna

=====

SUNIL KUMAR YADAV@ SUNIL KUMAR, Son of Jagdish Prasad Yadav,
Resident of Panposh, Roukela, P.S. Post- Ragonath Pali, District- Sundargarh
Odisha.

... .. Petitioner/s

Versus

1. The State of Bihar
2. Geeta Kumari, D/o Madheshwar Prasad, Resident of Village- Akauna, P.S.-
Bhagwan Ganj, District- Patna.

... .. Opposite Party/s

=====

with
CRIMINAL MISCELLANEOUS No. 12956 of 2017

Arising Out of PS. Case No.-301 Year-2016 Thana- PATNA COMPLAINT CASE District-
Patna

=====

SUNIL KUMAR YADAV @ SUNIL KUMAR YADAVM, son of Jagdish
Prasad Yadav, resident of Mohalla-Panposh Basti Raurkela, P.S.-
Raghunathpur Pali, District-Sundergarh Orrisa, at present resident of
Mohalla-1-28 Rajdhani Vihar Kachna road behind Brahm Kumari Ashram,
Sadhu Raipur, P.S.-Bidhan Sabha, District-Raipur (Chhattisgarh).

... .. Petitioner/s

Versus

1. The State of Bihar
2. Geeta Kumari, aged about 35 years wife of Sunil Kumar Yadav, resident of
village-Panposh Basti Raurkela, P.S.-Raghunath Pali, District-Sundergarh,
Orissa, at present Geeta Kumari, D/o Madheshwar Prasad, Resident of
Village- Akauna, P.S.- BhagwanGanj, District- Patna.

... .. Opposite Party/s

=====

Appearance :

(In CRIMINAL MISCELLANEOUS No. 2568 of 2017)

For the Petitioner/s : Mr. Kumar Mritunjay Narain

For the Opposite Party/s : Mr. Arun Kumar Singh -5

(In CRIMINAL MISCELLANEOUS No. 12956 of 2017)

For the Petitioner/s : Mr. Rajeev Kumar

For the Opposite Party/s : Mr. Madan Kumar

=====

CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI
ORAL ORDER



10 14-03-2019 Heard learned counsel for the petitioner as well as learned Additional Public Prosecutor along with learned counsel for the Opposite Party No.2.

2. This happens to be an unfortunate event, more particularly when the spouses became hostile to each other after ten years of marriage and further, being the parents of two siblings. It is further unfortunate that so many cases have cropped up amongst the spouses and one of being before the Hon'ble Apex Court.

3. It is further evident that petitioner Sunil Kumar Yadav has filed Cr. Misc. No.12956 of 2017 for grant of anticipatory bail wherein vide order dated 24.03.2017, the matter was referred to Patna High Court Conciliation and Mediation Centre and further, vide order dated 19.06.2017, two months time was given in the background of contents of report having at the end of the Patna High Court Conciliation and Mediation Centre. However, the subsequent report dated 31.07.2017, speaks that Mediation has failed.

4. However, the learned counsel for the petitioner has submitted that date is fixed on 01.05.2019, though no such date is visible from the order sheet. That being so, prayer of the petitioner to tag the instant petition with the aforesaid



anticipatory bail petition and further, directing that the same be listed on 01.05.2019 is hereby rejected.

5. It has been submitted at the end of the petitioner that the allegation whatever been alleged, happens to be outside jurisdiction of the Masaurdhi, Patna Court and that being so, instant prosecution happens to be bad in law due to incompetency of the Court to take cognizance. It has also been submitted that in the complaint petition, only to make out a local jurisdiction, there happens to be disclosure inappropriate way that all the accused so named therein, brought the complainant to Masaudhi West Bus Stand over Accent Car on 12.08.2016 at 4.00 P.M. and then, got her down with an instruction that after having cash appertaining to Rs. Two Lacs, then thereafter, she will be allowed, is nothing, but an absurd story, more particularly in the background of the fact that on that date, petitioner was engaged at the factory where he is being employed. Apart from this, it has also been submitted that he still offers and is ready to accept the complainant/ Opposite Party No.2 as his wife and further, is keen to restore his marital status. That being so, the order impugned whereby petitioner along with his father and brother has been summoned to face trial for an offence punishable under Section 323, 498A, 504 of



the I.P.C. be set aside. Petition be allowed.

6. On the other hand, learned counsel for the Opposite Party No.2 along with learned Additional Public Prosecutor vehemently opposed the submission having made on behalf of petitioner and submitted that it happens to be a continuing offence and that being so, the question having raised on behalf of petitioner questioning over jurisdiction of the Court did not find favour. Also submitted that there happens to be detailed narration of allegation how the complainant has been treated only for procurement of Rs. Two Lacs, so supported, tracing out prima facie case and that being so, the order impugned did not attract interference.

7. Unfortunately, the prevailing social fabric with regard to Constitution, acknowledgement of the family is being eroded and for that, so many factors are responsible. After all, it happens to be the pious obligation of both the parties to ward off the small irrelevant topics in order to maintain proper harmony, but having failed at their end irrespective of tenure, which they spent happily, contrapose the institution. The present one happens to be a glaring example. The spouses even after spending for ten consecutive years, being parents of two children, not only stake their own life at peril, but life of two



minor kids also, who on account of their infancy are to be cared by their parents. Be that as it may, it happens to be their wisdom, which ultimately forced them to fight like anything and as stated above, one litigation has also gone to the Apex Court.

8. The major ground which the petitioner has raised, is want of jurisdiction of the Court. In order to appreciate the same, first of all, the social fabric is to be perceived. There happens to be no law allowing the wife to stay at her sasural, but is a life long precedence that female gender is to shift herself from Maika to sasural after marriage, save and except some parts of North East and some places within Kerala State. That means to say, stay of female at her sasural after marriage has been accepted and legal presumption is found in its favour, till her life or till faced with unforeseen circumstances. That means to say, after marriage, presence of female at her sasural is duly acknowledgeable as a permanent place of residence and any kind of infringement in depriving her acknowledgment certainly will be a continuing offence till restoration of her status irrespective of the fact that the girl has got share as a coparcener after amendment of Hindu Succession Act. Furthermore, the Domestic Violence Act also acknowledged the same. Now, the theme is to be seen in the aforesaid background. On account of



atrocities/ cruelty having over the person of girl either mentally or physically while at her sasural by her husband or connected therewith drew attention of the legislature, whereupon there happens to be introduction of Section 498A of the I.P.C., apart from others along with suitable amendment in the Evidence Act in order to properly care the aforesaid eventuality. That means to say, the basic feature, the aim and object of the Act is to shield the female from atrocity depriving her from post marital status and in likewise manner, the same could be perceived, when its legality is being challenged. In *Upendra Rai v. the State of Bihar and another reported in 2017(1) B.B.C.J. 223*, all the surrounding circumstances have been taken into consideration including that of relevant provisions of the Cr.P.C. guiding the issue and lastly, it has been concluded that being continuing offence, the prosecution could be either at her Naihar/ place of residence by the complainant/ wife or at her sasural, in case, she succeeds to stay. Furthermore, during course of appreciation, apart from consideration of the other points, the obligation having entrusted over the accused relating to jurisdictional avenue has also been perceived in a manner as held by the Hon'ble Court in *Krishna Kumar Variar v. Share Shoppe reported in 2010 Cr.L.J. 3848*, directing the accused to raise the



issue before the learned lower Court itself at first instance.

9. Gone through the order impugned in consonance with the materials having annexed with the instant petition wherefrom it is evident that the finding of the learned lower Court with regard to prima facie case justifying the summoning of the petitioner including others did not require interference.

10. In ***Rakhi Mishra v. State of Bihar and others reported in (2017) 16 SCC 772***, it has been held:-

“4. We have heard learned counsel appearing for the parties. We are of the considered opinion that the High Court erred in allowing the application filed by Respondent Nos.2, 4, 5, 6, 7, 8, 9 and 10 and quashing the criminal proceedings against them. A perusal of the FIR would clearly show that the Appellant alleged cruelty against Respondent Nos.2, 4, 5, 6, 7, 8, 9 and 10. This Court in [Sonu Gupta v. Deepak Gupta and Ors.](#) (2015) 3 SCC 424, 426 held as follows:

“8. ... At the stage of cognizance and summoning the Magistrate is required to apply his judicial mind only with a view to take cognizance of the offence... to find out whether a prima facie case is made out for summoning the accused persons. At this stage, the Magistrate is not required to consider the defence version or materials or arguments nor he is required to evaluate the merits of the materials or evidence of the complainant, because the Magistrate must not undertake the exercise to find out at this stage whether the



materials would lead to conviction or not.”

11. Consequent thereupon, instant petition lacks merit
and is accordingly, dismissed.

12. Office to list Cr. Misc. No.12956 of 2017 as per
roster.

(Aditya Kumar Trivedi, J)

vikash/-

U		T	
---	--	---	--

