

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**CRIMINAL REVISION No.674 of 2017**

Arising Out of PS. Case No.-134 Year-2016 Thana- COMPLAINT CASE District- Supaul

Khusboo Kumari @ Rubi Kumari, Wife of Bharat Mani, resident of Ward No. 01, Birpur, District- Supaul, at present D/o Raj Kumar Jha, resident of Village- Kamalpur, P.S.- Kanauli, District- Supaul.

... .. Petitioner

Versus

1. The State Of Bihar
2. Udai Kumar Mishra, son of Late Panchnan Mishra
3. Saroj Mishra, wife of Udai Kumar Mishra
4. Rupa Kumari, D/o Udai Kumar Mishra O.P. No. 2 to 4 are resident of Ward No. 01, Birpur, District- Supaul.

... .. Respondents

**Appearance :**

|                      |   |                                            |
|----------------------|---|--------------------------------------------|
| For the Petitioner/s | : | Mr. Amrit Abhijat with Mr. Manoj Kr. Gupta |
| For O.P. No. 2 to 4  | : | Mr. S.P. Singh                             |
| For the State        | : | Mr. Ajit Kumar                             |

**CORAM: HONOURABLE MR. JUSTICE VINOD KUMAR SINHA**  
**ORAL ORDER**

5      22-07-2019                      This revision application is directed against the order dated 27.9.2016 passed by learned A.C.J.M, Birpur in Complaint Case No. 134(C) of 2016 by which though he has issued process against the accused husband after inquiry but dismissed the complaint so far opposite party Nos. 2 to 4 are concerned not finding case true against them.

The fact giving rise to this application, in short, is that petitioner being wife of Bharat Muni has lodged a complaint against her husband Bharat Muni and opposite party Nos. 2 to 4, who are father-in-law, mother-in-law and sister-in-law (Nanad) of the petitioner, that they have demanded Rs.50 lac and for that



they have assaulted her and subjected her to cruelty. It appears that during inquiry the petitioner was examined on S.A. and two witnesses have been examined on her behalf and the learned A.C.J.M. after inquiry issued process under Section 498A IPC against the husband of the complainant and dismissed the complaint with regard to opposite party Nos. 2 to 4.

Being aggrieved by the same, the present revision application has been filed by the petitioner on the ground that learned court below considering the fact that husband has filed a divorce petition against the complainant under Section 13 of the Hindu Marriage Act and due to that intentionally names of rest of female members were mentioned in the complaint petition in order to harass whole family members, has passed the impugned order, which is not sustainable in the eye of law as at the time of issuance of process learned Magistrate has to confine the order only on the basis of the material available on the record at that time and defence of the accused persons ought not to be considered.

Learned counsel for opposite party Nos. 2 to 4 has appeared and filed a counter affidavit. He has submitted that the materials collected during trial there was no sufficient evidence against opposite party Nos. 2 to 4. However, he also could not



justify as to how learned Magistrate can consider the documents filed by accused persons at the time of issuance of process.

From the discussions made above, it appears that the impugned order dated 27.9.2016, by which process has been issued against the husband of the complainant and complaint against opposite party Nos. 2 to 4 has been dismissed by considering the fact that husband of the complainant has filed a divorce petition under Section 13 of the Hindu Marriage Act is still pending, does not appear to be sustainable as defence of the accused cannot be looked into at this stage.

Accordingly, this revision application is allowed. The impugned order is set aside. The matter is remitted back to learned Magistrate for further inquiry.

**(Vinod Kumar Sinha, J)**

spal/-

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