

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.3372 of 2016

Arising Out of PS. Case No.-942 Year-2008 Thana- ROHTAS COMPLAINT CASE District-
Rohtas

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Amita Srivastava @ Smt. Anita Srivastava wife of Krishan Murari Lal
srivastava, Resident of Missir Bazar, Behind the Rai Shabka, Hotel Missir
Bazar, Gazipur, Police Station - Kotwali, Gazipur, District Gazipur(U.P)

... .. Petitioner/s

Versus

1. The State of Bihar
2. Priyanka Srivastava daughter of Shchindra Nath Srivastava Mohalla-
Awadhesh Aabha Niwas, Behind CMC Kaliasthan, Sasaram, District Rohtas.

... .. Opposite Party/s

with

Criminal Miscellaneous No. 8053 of 2016

Arising Out of PS. Case No.-942 Year-2008 Thana- ROHTAS COMPLAINT CASE District-
Rohtas

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Bipin Bihari Lal son of Late Ujagir Prasad resident of Missir Bazar, behind
the Rai Shabka Hotel, Missir Bazar, Gazipur, Police Station Kotwali, Gazipur,
District Gazipur (U.P.).

... .. Petitioner/s

Versus

1. The State of Bihar.
2. Priyanka Srivastava daughter of Sachindra Nath Srivastava mohalla
Awadhesh Aabha Niwas, behind CMC Kaliasthan, Sasaram, District Rohtas.

... .. Opposite Party/s

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Appearance :

(In Criminal Miscellaneous No. 3372 of 2016)

For the Petitioner/s : Mr. Prabhat Kumar with
Mrs. Kanak Verma, Advocates

For the State : Mr. Jharkhandi Upadhyay, APP

For the Complainant : Mr. Purushottam Kumar Jha with
Mr. Avanindra Kumar Jha, Advocates

(In Criminal Miscellaneous No. 8053 of 2016)

For the Petitioner/s : Mr. Prabhat Kumar with
Mrs. Kanak Verma, Advocates

For the State : Mr. Jharkhandi Upadhyay, APP

For the Complainant : Mr. Purushottam Kumar Jha with
Mr. Avanindra Kumar Jha, Advocates



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CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH

ORAL JUDGMENT

Date : 07-01-2019

Heard learned counsel for the petitioners; learned A.P.Ps. for the State and learned counsel for the opposite party no.

2. The petitioners and opposite party no. 2 are also present.

2. The petitioners have moved the Court under Section 482 of the Code of Criminal Procedure, 1973 for the following relief:

“That this applications being filed for invoking the inherent power of this Hon'ble High Court for quashing the order dated 22.10.2008 in complaint case No. 942 of 2008 passed by the Learned Sub-Divisional Judicial Magistrate, Sasaram in Complain Case No. 942 of 2008 by which the learned Sub-Divisional Judicial Magistrate is pleased to take cognizance for the offences under Section 498 (A) of the Indian Penal Code and ³/₄ D.P. Act against the petitioner along with others.”

3. The petitioner of Cr. Misc. No. 8053 of 2016 is the husband of the opposite party no. 2 whereas the petitioner of Cr. Misc. No. 3372 of 2016 is the wife of the elder brother of the petitioner of Cr. Misc. No. 8053 of 2016.

4. The allegations against them and three other members of their family is of torture and demand of dowry and



specifically with regard to the present petitioners that they had illicit relationship.

5. Learned counsel for the petitioners submitted that it is the opposite party no. 2, who had deserted her husband and only for a brief period, she resided with the husband at Mumbai but when the husband took transfer to his native place, i.e., Gazipur in Uttar Pradesh, she has not been living with him. Learned counsel submitted that after such allegations were levelled, the husband got an official residence allotted to him but even then the opposite party no. 2 did not reside in the residence and, thus, he has tried his best for her to come back. Learned counsel submitted that in Maintenance Case No. 25 of 2009 filed by the opposite party no. 2 against the husband, before the Principal Judge, Family Court, Rohtas at Sasaram, the court had recorded that the opposite party no. 2 during reconciliation had refused to go with her husband. It was submitted that in the maintenance case, the husband is paying Rs. 3,000/- per month to the opposite party no. 2. Learned counsel submitted that one of the petitioners is also a lady. Learned counsel submitted that the mother of opposite party no. 2 had filed a complaint before the State Commission for Women, Uttar Pradesh at Lucknow in which the petitioner



had given a written reply that she had no complain against her family members.

6. Learned A.P.P. and learned counsel for the opposite party no. 2 submitted that the entire family of her husband, except for the mother-in-law, used to torture her with regard to dowry and also physically assaulted her. It was submitted that soon after marriage the opposite party no. 2 could understand the illicit relationship between the two petitioners and because of her objection, torture started. Learned counsel further submitted that there is a documented long and uninterrupted sequence of torture right from the very beginning which would be clear from the fact that after sometime, when the husband was transferred to Kandla in Gujarat, things were also not very good but because the husband was not in the company of the other petitioner, she was living with him. It was submitted that the husband, thereafter managed to get his transfer to Gazipur, i.e. his home city, and even left for joining without taking the petitioner and her three years old son and she had to write to the local Superintendent of Police to permit her to go home after locking the house. It was submitted that even otherwise she had filed a petition before the local police that if anything



untoward happened to her or her son, the accused should be held responsible. Learned counsel submitted that the husband even when he went to Mumbai tortured her and every time there was demand for money as a pre-condition for taking her back. Learned counsel submitted that in the case filed by the opposite party no. 2 against the accused with regard to return of *stridhan* as well as Rs. 6,00,000/- taken by way of Rs. 5,75,000/- through cheque and Rs. 25,000/- in cash, the Sessions Judge, Rohtas at Sasaram had recorded in the year 2012 that the opposite party no. 2 was ready to go to the matrimonial home but the husband had flatly refused to take her. Learned counsel submitted that as far as the stand taken before the State Commission for Women, Uttar Pradesh, the same was only with the intention of not making matters worse and leaving scope of reconciliation and further that the same is only cryptic. It was submitted that the same, thus, cannot be said to be a true reflection of the real torture which the opposite party no. 2 has been made to suffer at the hands of the petitioners and their other family members. Learned counsel submitted that even from Kandla, the opposite party no. 2 had written letters to her brother which have also been produced before the court below, which goes to show that regularly there



was demand of dowry and torture. Learned counsel for the opposite party no. 2 further drew the attention of the Court to specific paragraphs in the complaint where at paragraphs no. 6, 9, 11, 12, 13 and 14 the sequence of chain of events with regard to torture and demand of dowry have been mentioned and it has also been specifically stated that there was illicit relationship between the petitioners and that she was made to suffer both physically and mentally by the accused.

7. At this stage, when the Court put a direct query to both learned counsel for the petitioners and the opposite party no. 2, in the presence of the parties, learned counsel for the petitioners took a categorical stand that the opposite party no. 2 would not be taken back in the matrimonial home. However, learned counsel for the opposite party no. 2 and the opposite party no. 2 submitted that she was ready to go and live with the husband. On a further query as to how and why she now wants to go and live with the husband when regularly and continuously he used to harass and torture her, she submitted that from the year 2016 the petitioner is no more living in the Gazipur and presently posted in Kolkata and further, taking into account the future and career of the son, who is now 14 years old, she has taken a conscious decision to go and live in



the matrimonial home along with the husband and moreover, now the son being 14 years of age, she is confident that he shall act as her protector.

8. Having considered the facts and circumstances of the case and submissions of learned counsel for the parties, the Court does not find any merit in the present application. From the materials on record before this Court and the court below, it is apparent that the same are sufficient for the Court to take cognizance of offence under Section 498A of the Indian Penal Code warranting a full-fledged trial. Thus, at present, the order taking cognizance being under challenge, in the considered opinion of the Court, does not require to be interfered with.

9. Accordingly, the applications stand dismissed.

(Ahsanuddin Amanullah, J)

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