

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.4306 of 2015

Arising Out of PS. Case No.-56 Year-2014 Thana- MADHEPURA COMPALINT CASE
District- Madhepura

-
1. Binod Lal Das son of Late Jai Narayan Lal Das
 2. Manoj Kumar @ Manoj Kumar Mani son of Binod Lal Das
 3. Sunita Devi wife of Binod Lal Das All resident of village - Nagar Panchayat Murliganj, Ward No. 10, Police Station - Murliganj, District - Madhepura.

... .. Petitioner/s

Versus

1. State Of Bihar
2. Kumari Archana Daughter of Surendra Lal Yadav resident of Village Mohalla Satsang Vihar, Ward No. 07, Nagar Panchayat Murliganj, Police Station - Murliganj, District Madhepura.

... .. Opposite Party/s

with
CRIMINAL MISCELLANEOUS No. 10905 of 2015

Arising Out of PS. Case No.-56 Year-2014 Thana- MADHEPURA COMPALINT CASE
District- Madhepura

Mukesh Kumar son of Binod Lal Das, Resident of village- Nagar Panchayat Murliganj, Ward No. 10, P.S.- Murliganj, District- Madhepura

... .. Petitioner/s

Versus

1. State Of Bihar
2. Kumari Archana daughter of Surendra Lal Yadav Resident of village/ Mohalla- Satsang Vihar, Ward No. 07, Nagar Panchayat Murliganj, P.S.- Murliganj, District- Madhepura

... .. Opposite Party/s

Appearance :

(In CRIMINAL MISCELLANEOUS No. 4306 of 2015)

For the Petitioner/s	:	Mr. Baxi S.R.P. Sinha, Sr. Adv
	:	Mr. Shekhar Kumar Singh, Adv
	:	Mr. Rupesh Kumar, Adv
For the O.P.No.2	:	Mr. Shailendra Kumar Singh, Adv
For the State	:	Mr. Asha Devi, APP

(In CRIMINAL MISCELLANEOUS No. 10905 of 2015)

For the Petitioner/s	:	Mr. Baxi S.R.P. Sinha, Sr. Adv
	:	Mr. Shekhar Kumar Singh, Adv
	:	Mr. Rupesh Kumar, Adv
For the O.P.No.2	:	Mr. Shailendra Kumar Singh, Adv
For the State	:	Mr. Dashrath Mehta, APP



CORAM: HONOURABLE MR. JUSTICE BIRENDRA KUMAR
ORAL JUDGMENT

Date : 20-09-2019

Heard learned counsel for the parties in both the applications.

2. Petitioners are husband and other relations of opposite party No.2. In both the applications under Section 482 Cr.P.C., the petitioners have sought for quashment of order dated 17.12.2014 passed by the learned S.D.J.M., Madhepura in Complaint Case No.56 of 2014 whereby the petitioners have been asked to face trial for offences under Section 498A I.P.C. only.

3. According to complaint petition, opposite party No.2 was married with petitioner-Mukesh Kumar on 29.06.2012 in a Shiv Temple. The parents of the complainant had gifted to the petitioners as per their capacity but the family members were not happy with the gift and they were demanding dowry. The demand was of Rs.Ten Lacs for constructing a house. The parents of opposite party No.2 paid Rs.Five Lacs for that purpose and Rs. Five Lacs was utilized for construction of a house at Murliganj Satsang Vihar but the accused person were still demanding the remaining Rs.Five Lacs and for non-payment of further Rs. Five Lacs, there is allegation of abuse and assault.

4. Submission is that each and every demand does not fall within the mischief of unlawful demand as explained in



Section 498A I.P.C. The demand alleged was not as a consideration of marriage rather was for fulfillment of some family requirement.

5. Learned counsel for opposite party No.2 submits that prima facie ingredient of the offence alleged is made out in the complaint petition and has been supported by the witnesses at the time of enquiry under Section 202 Cr.P.C. and once the Magistrate applied its mind and asked the petitioners to face trial this Court should not substitute its own views unless the view of the Magistrate is perverse one.

The probable defence of the accused cannot be looked into at this stage. Reliance has been placed on **Sonu Gupta Vs. Dipak Gupta**, reported in **(2015) 3 SCC 424**, case of **Md. Allauddin Khan Vs. The State of Bihar & Ors**, reported in **2019(2)PLJR (SC)323** and case of **Rakhi Mishra Vs. State of Bihar & Ors**, reported in **2017(4)PLJR (SC)21**.

6. There is no dispute with the proposition that at the stage of taking cognizance, the Magistrate is required to see whether the offences alleged are prima facie disclosed. There is no dispute that probable defence of the accused cannot be looked into at the stage of defence rather that can be looked into at the appropriate stage of the trial only. However, the question before



this Court is whether the alleged demand was an unlawful demand. Same question was there before a Division Bench of the Hon'ble Jharkhand High Court in **Saro Bano & Ors Vs. The State of Jharkhand**, reported in **2005 Cri. L.J.65**. Though that was an appeal against conviction, however, the nature of the demand alleged was of money for construction of the house and the Hon'ble Jharkhand High Court held that the demand was not a dowry demand as defined under Section 2 of the Dowry Prohibition Act.

7. In **Vipil Jaiswal Vs. State of Andhra Pradesh**, reported in **(2013)3 PLJR (SC) 91**, money demanded from the family members of wife was for purchase of a computer and setting up own business. The case was again an appeal against conviction and the Hon'ble Supreme Court held that the demand was not a dowry demand as defined in Section 2 of the Dowry Prohibition Act, 1961.

8. In the case of **Appasaheb & Anr. Vs. State of Maharashtra**, reported in **2007 AIR SCW 456**, the demand of money was for meeting urgent financial need of the family and for meeting urgent domestic expenses. The Hon'ble Supreme Court held that it was not a dowry demand.



9. Apparently, the demand alleged against the petitioners was for construction of a house which was not a dowry demand or unlawful demand. Hence, the basic ingredient for offence under Section 498A I.P.C. is missing in this case. Therefore, the criminal prosecution of the petitioners would amount to abuse of the process of the Court.

10. Accordingly, the impugned order and entire criminal prosecution stands quashed and both the applications are allowed.

(Birendra Kumar, J)

Nitesh/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	23.09.2019
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