

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No. 49629 of 2014

Arising Out of Complaint Case No.-663 (c) Year-2013 Thana- PATNA COMPLAINT CASE
District- Patna

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1. Kamata Prasad Son of Late Saguni Sao Resident of Village - Sabajpura More, Police Station – Phulwari Sharif, District – Patna.
 2. Semma Devi, Wife of Rajesh Kumar, Resident of Mohalla - Lohanipur, Post Office + Police Station - Kadam Kuan, District – Patna.
 3. Leelawati Devi, Wife of Ishwar Prasad, Resident of Mohalla - Sabajpura More, Police Station – Phulwari Sharif, District – Patna.
 4. Meena Devi, Wife of Sunil Prasad, Resident of Mohalla - Purandrapur, Post Office - G.P.O. Police Station - Jakkanpur, District – Patna.
 5. Bamjit Kumar, Son of Kamata Prasad, Resident of Village - Sabajpura More, Police Station – Phulwari Sharif, District – Patna. (Deleted by order dated 16.10.2017).

... .. Petitioner/s

Versus

1. The State of Bihar
2. Smt. Shivani Devi, Wife of Sri Bamjit Kumar and Daughter of Sri Radha Mohan Gupta, At present residing in Prameshwar Singh Lane, West Lohanipur, Post & Police Station - Kadamkuan, District – Patna.

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr. Dhananjay Prasad, Advocate
For the State	:	Mr. Dinesh Singh, A.P.P.
For the Opposite Party No. 2	:	Mr. Nagendra Prasad and Mr. Amit Narayan, Advocates

**CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN
AMANULLAH**

ORAL JUDGMENT

Date : 27-03-2019

Heard learned counsel for the petitioners no. 1 to 4;
learned A.P.P. for the State and learned counsel for the opposite
party no. 2.

2. The application already stands withdrawn, as far as
petitioner no. 5 is concerned, by order dated 16.10.2017.



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

“That this is an application for quashing the order or taking cognizance and issuance of process dated 23.07.2013 passed by S.D.J.M. Patna in Complaint Case No. 663(c) of 2013 under section 498(A) I.P.C. and 3/4 D.P. Act and thereby quash the whole proceeding as against the petitioners.”

4. The allegation against the petitioners and the husband of the opposite party no. 2 (the erstwhile petitioner no. 5) was of demand of dowry and torture.

5. Learned counsel for the petitioners submitted that there is no specific allegation against the petitioners and the entire allegation is against the husband of the opposite party no. 2, who is not the petitioner in the present application. It was submitted that the opposite party no. 2 herself, at the prodding of her parents, does not want to live in the matrimonial home and is not fully mentally developed due to which she can neither appreciate nor understand the requirement of living together in the matrimonial home by giving due respect to the in-laws and also cannot manage the child on her own. Learned counsel submitted that the allegation of being turned out from the matrimonial home and demand of dowry will be falsified from the complaint itself, where



at many places, it has been said that at the insistence of the husband of the opposite party no. 2, she had gone back to the matrimonial home. Learned counsel submitted that if the petitioners had not wanted the opposite party no. 2 to return to the matrimonial home, her husband would not have made her to come back. It was further submitted that if there was serious dispute, the opposite party no. 2 would not have become pregnant thrice. Learned counsel submitted that for the same allegations, subsequently Phulwari Sharif P.S. Case No. 400 of 2013 has also been filed on 20.07.2013 by the opposite party no. 2, against the petitioners and four other persons, whereas the present complaint case was filed on 28.02.2013. Learned counsel submitted that on 04.04.2012, there was an agreement between the opposite party no. 2 and her husband with regard to maintaining cordial relationship. Learned counsel submitted that various other cases have also been filed against the petitioners by the opposite party no. 2, including maintenance case, in which she is receiving maintenance of Rs. 5,000/- per month. Learned counsel drew the attention of the Court to the decision of the Hon'ble Supreme Court in the case of **Preeti Gupta v. State of Jharkhand** reported as **(2010) 7 SCC 667**, where it has been held that allegations are to be scrutinized with great care and circumspection, especially



against husband's relatives who were living in different cities and never visited or rarely visited the matrimonial home of the complainant. Learned counsel submitted that pursuant to the earlier order of the Court, affidavit has been filed in which it has been stated that the petitioners no. 2 and 4 are married sisters of the husband of the opposite party no. 2 and petitioner no. 3 is the wife of the brother of the husband of the opposite party no. 2. It was submitted that petitioner no. 2 was married in the year 1985 and petitioner no. 4 was married in the year 1998, that is, much before the marriage of opposite party no. 2 on 12.02.2007 and that they were living separately. It was submitted that the petitioner no. 1 is the father-in-law of the opposite party no. 2. Learned counsel submitted that in the entire complaint case there being no specific allegation against the petitioners and further the petitioners no. 2 and 4 being married sisters living away from the matrimonial home and the petitioner no. 3 having separate mess, being married in the year 1986, the present prosecution is an abuse of the process of the Court.

6. Learned A.P.P. fairly submitted that as far as the petitioners are concerned, the allegations appear to be improbable and made-up.



7. Learned counsel for the opposite party no. 2 submitted that she is ready, but the petitioners are not allowing her to live in the matrimonial home. However, on the direct query of the Court that how such allegations can be believed when in the complaint itself it has been mentioned that many times the husband of the opposite party no. 2 had insisted that she come to the matrimonial home and that she also went there and thrice she was also pregnant which indicates that there was no condition for payment of dowry before accepting the opposite party no. 2 in the matrimonial home, learned counsel could not give any reply.

8. Having considered the facts and circumstances of the case and submissions of learned counsel for the parties, the Court finds that a case for interference has been made out.

9. Against the petitioners (1 to 4) there is no specific or direct allegations and the same is general and omnibus. Further, as has rightly been submitted by learned counsel for the petitioners, when on the one hand, it is admitted that the husband of the opposite party no. 2 had insisted on many occasions for the opposite party no. 2 to come to the matrimonial home and the opposite party no. 2 had gone, it is difficult to believe that the petitioners were insisting for payment of a heavy amount of dowry before accepting the opposite party no. 2 in the matrimonial home.



The two situations, which have been narrated in the complaint itself, cannot be reconciled.

10. For reasons aforesaid, the application is allowed. The entire criminal proceeding of Complaint Case No. 663 (C) of 2013, including the order dated 23.07.2013, by which cognizance has been taken, as far as it relates to the petitioners no. 1 to 4, stands quashed.

(Ahsanuddin Amanullah, J.)

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