

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**CRIMINAL MISCELLANEOUS No.27006 of 2017**

Arising Out of PS. Case No.-133 Year-2015 Thana- GRIYAK District- Nalanda

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1. VANDANA DEVI @ VANDANA, Wife of Neeraj Kumar, resident of Mohalla Phus Bangla, Police Station- Jharia, District- Dhanbad, Jharkhand.
  2. Namrata Kumari, W/o Nandan Chandra, resident of Mohalla- Tekari Road, Police Station- Kotwali, District- Gaya, Bihar.
  3. Archana Kumari, D/o Krishna Prasad, Resident of Mohalla Badhan Ram Bhadani Path, Jhanjhari Gali, Police Station- Jhumari Telaiya, District- Kodarma.

... .. Petitioner/s

Versus

1. State Of Bihar
2. Kumari Sarika, wife of Gulshan Kumar, Daughter of Sri Suresh Prasad, resident of Village- Durgapur, Police Station- Giriyak, District- Nalanda.

... .. Opposite Party/s

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**Appearance :**

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| For the Petitioner/s     | : | Mr. Sanjeev Ranjan, Advocate  |
| For the Opposite Party/s | : | Mr. Jharkhandi Upadhyay, APP. |
| For the O.P. No. 2       | : | Mr. Mahendra Thakur, Advocate |
|                          |   | Mr. Vijay Kumar, Advocate     |

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**CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR**  
**ORAL ORDER**

4      08-08-2019                      Heard the learned counsel for the parties.

The petitioners are the married and unmarried sisters-in-law of the informant/opposite party no. 2 who seek quashing of the order dated 16.03.2017 passed in Giriyak P.S. Case No. 133 of 2015 by the learned Additional Chief Judicial Magistrate-VI, Bihar Sharif whereby cognizance has been taken against them also under Section 498A of the Indian Penal Code and Sections 3/4 of the Dowry Prohibition Act.

It has been alleged in the FIR that the



informant/opposite party no. 2 was married to Gulshan Kumar. For the marriage, the father of aforesaid Gulshan Kumar took Rs. 12,70,000/- from the father of the informant/opposite party no. 2. Even then, she was being pressurized for bringing additional dowry and non-fulfillment of the same led to mental and physical torture. It has been stated that on one occasion when she was working in the kitchen, two of the petitioners tried to set her on fire but she could anyhow be saved because of timely arrival of neighbours. She has stated several acts of omission and commission by all the members of her matrimonial family.

On the basis of the aforesaid complaint, the subject FIR viz. Giriyak P.S. Case No. 133 of 2015 was registered under Section 498A of the Indian Penal Code and Sections 3/4 of the Dowry Prohibition Act. After the investigation, the police submitted charge sheet whereupon cognizance has been taken by order dated 16.03.2017 which is under challenge.

It has been submitted on behalf of the petitioners that vague, general and omnibus allegations have been levelled against the sisters-in-law of opposite party no. 2 in a bid to implicate all the family members of her husband.

The petitioner no. 1 is said to have been



married in the year 2011 and has been staying at Jharia in her matrimonial home. Similarly, the petitioner no. 2 is also married and stays happily in her matrimonial home at Gaya. At the time of filing of the case, petitioner no. 3 was still unmarried.

Learned counsel for the opposite party no. 2 however has submitted that there is specific accusation against the petitioners also and cognizance of the offence and not of the offenders is taken and whatever has been stated by the petitioners in their defence could be tested at the stage of discharge or in the trial.

This Court notices that without observing the formalities under Sections 154(1) and 154(3) of the Code of Criminal Procedure, an order has been passed by the learned Magistrate for registration of the FIR on the basis of the complaint lodged by opposite party no. 2 under Section 156(3) Cr.P.C.

In ***Priyanka Srivastava v. State of Uttar Pradesh (2015) 6 SCC 287***, the Supreme Court has cautioned that the recourse under Section 156(3) Cr.P.C. should not be taken in a routine manner. In ***Devarapalli Lakshminarayana Reddy and Others v. V. Narayana Reddy and Others (1976) 3 SCC 252*** the Supreme Court has held that the provisions contained in Section 156(3) Cr.P.C. is in the nature of a



peremptory reminder or intimation to the police to exercise their plenary powers of investigation under Section 156(1) Cr.P.C. Such an investigation embraces the entire/continuous process which begins with collection of evidence under Section 156(1) Cr.P.C. and ends with a report or charge sheet under 173 Cr.P.C. Similarly in **Anil Kumar v. M.K. Aiyappa (2013) 10 SCC 705**, a two Judges Bench of the Supreme Court, after examining the provisions contained in 156(3) Cr.P.C. held that whether jurisdiction is exercised on a complaint filed in terms of Section 156(3) Cr.P.C. or Section 200 Cr.P.C., the Magistrate is required to apply his mind in such a case and cannot simply refer the matter under Section 156(3) Cr.P.C. The application of mind by the Magistrate should be reflected in the order. After going through the complaint, documents and hearing the complainant, the Magistrate must record his satisfaction for a direction under Section 156(3) Cr.P.C. for registration of a case. Similarl such caution has been sounded in **Dilawar Singh v. State of Delhi (2007) 12 SCC 496** and **CREF Finance Ltd. v. Shree Shanthi Homes Private Ltd. (2005) 7 SCC 467** that only in appropriate cases, the complaint be sent to police for investigation under Section 156(3) Cr.P.C.

What is therefore necessary is the application of



mind by the Magistrate and not a mechanical order (refer to ***Ramdev Food Products Private Ltd. v. State of Gujarat (2015) 6 SCC 439***) and ***Lalita Kumari v. Govt. of U.P. (2014) 2 SCC 1***.

It has been submitted on behalf of the petitioners that opposite party no. 2 has neither filed a prior application under Section 154(1) Cr.P.C. nor under Section 154(3) Cr.P.C. and complaint was filed with a request to refer the same to the police for investigation under Section 156(3) Cr.P.C. which prayer was allowed on the very date of the filing of the complaint.

Apart from this, this Court also takes note of the fact that reckless accusation has been made against the sisters-in-law by the opposite party no. 2 suggesting her anxiety to rope in as many relatives of the husband as possible. Two of the petitioners were not even living under the same roof as that of opposite party no. 2. The allegations primarily appear to be vague and general and it does not appear to be reasonable that the petitioners would set the opposite party no. 2 on fire and she would be saved only with the timely arrival of neighbours. If that were the case, that was the date and time when the case ought to have been lodged against the petitioners (refer to ***Geeta Mehrotra and Anr. v. State of Uttar Pradesh AIR (2013) SC 181; B.S. Joshi and Others***



***v. State of Haryana and Anr. AIR (2003) SC 1386, G.V. Rao v. L.H.V. Prasad and others (2000) 3 SCC 693, Ramesh v. State of Tamilnadu (2005) 0 SCC (Cr) 735.***

The fact that the petitioners no. 1 and 2 are married from before and petitioner no. 3 was unmarried at the time of lodging of the case, did not weigh with the learned Magistrate and it was not taken into account that the allegations are vague and bereft of details.

In such an event, allowing the prosecution to continue as far as the petitioners are concerned, would not only be abuse of the process of the court but would amount to harassment of these petitioners without any reason, which might impact their family life as well.

It is a matter of common experience that most of the complaints under Section 498A IPC are filed in the heat of the moment and without proper deliberation. This fact has been noted by several judgments of the Supreme Court and a caution has been sounded to look at the facts of each case for proper appreciation.

For the ends of justice, thus, this Court is of the view that the proceeding with respect to the petitioners be quashed (refer to ***State of Karnantaka v. L. Muniswamy and others (1977) 2 SCC 699, State of Haryana and others v. Bhajan Lal and***



***Others (1992) Suppl 1 SCC 335, G. Sagar Suri and Another v. State of U.P. and Others (2000) 2 SCC 636, Zandu Pharmaceutical Works Ltd. and Others v. Mohd. Sharaful Haque and Another (2005) 1 SCC 122 and Inder Mohan Goswami and Another v. State of Uttaranchal and Others (2007) 12 SCC 1.***

Thus in view of no specific allegation against the petitioners and they being ladies, who are married and are residing in their matrimonial homes, this Court exercises its jurisdiction under Article 482 Cr.P.C. and sets aside the order of cognizance and all criminal prosecution arising therefrom with respect to the petitioners.

The petition stands allowed.

**(Ashutosh Kumar, J)**

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