

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.3270 of 2017

Arising Out of PS. Case No.-44 Year-2015 Thana- PATNA COMPLAINT CASE District-
Patna

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1. Noman Ansari and Ors S/o Suleman, resident of Hussain Manzil, Mohammadpur Lane, Training School, Mahendru near Masjid, P.O.- Mahendru, P.S.- Sultanganj, Patna- 800008.
 2. Rashida Khatoon, W/o Nooman Ansari, resident of Hussain Manzil, Mohammadpur Lane, Training School, Mahendru near Masjid, P.O.- Mahendru, P.S.- Sultanganj, Patna- 800008.
 3. Md. Gufran, S/o Noman Ansari, resident of Hussain Manzil, Mohammadpur Lane, Training School, Mahendru near Masjid, P.O.- Mahendru, P.S.- Sultanganj, Patna- 800008.

... .. Petitioner/s

Versus

1. State Of Bihar and Anr
2. Nikhat Parween @ Guria, W/o Md Imran @ Mannu, D/o Md Akbar, resident of Hussain Manzil, Mohammadpur Lane, Training School, Mahendru near Masjid, P.O.- Mahendru, P.S.- Sultanganj, Patna- 6, at present residing at Arya Samaj Road, P.O.P.S.- Khagaul, Patna- 801105..

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr.Lakmesh Marvind, Adv.
For the Opposite Party/s : Mr. Pawan Kumar Chaurasiya, APP

CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI
ORAL ORDER

4 20-06-2019 It has been pleaded at the end of learned counsel for the petitioners that petitioner no.2 is dead. Hence, instant petition abates against her.

2. Heard learned counsel for the petitioners as well as learned APP along with learned counsel for the OP No.2.

3. Considering the prayer of the petitioners that case has been compromised and in pursuance thereof, OP No.2 is residing with her husband and is not interested to pursue with the case whereupon, there happens to be absence of OP No.2 before the lower court, OP No.2 was noticed and after her



appearance all the disclosure having at the end of petitioners have been controverted.

4. This case depicts the dubious character of the petitioners who, at one occasion, allured the complainant/OP No.2/daughter-in-law to resolve the dispute and further, entered into compromise preventing her to adduce the evidence before charge. Side by side, petitioners have come to this Court asking for quashing of the order of cognizance on the ground that being father-in-law, mother-in-law and brother-in-law, do not carry specific allegation and so, in the background of principle laid down at the end of Hon'ble Apex Court in the case of ***Gita Mehrotra v. State of UP as reported in 2013 (1) PLJR 11 (SC)***, cognizance against the petitioner should be quashed.

5. Learned counsel for OP No.2/Complainant has submitted that the brutal assault having over the person of OP No.2 is still being cared by the doctor and for that OP No.2 is still staying at her *Maika* without any response at the end of her *Sasuralwala*. At an earlier occasion, though petitioners have approached and said that only after having the case compromised, she will be allowed to stay at her Sasural, whereupon, seeing no alternative, the OP No.2 entered into compromise but, even after compromise she has not been



allowed to stay at her Sasural nor she is being provided proper medical facility towards the injury/fracture having at the end of accused persons, so the compromise, as is evident, happens to be a conduct of betrayal only for the purpose of bail. Furthermore, on one pretext or other, the matter is being delayed at the end of petitioners, so that they be able to show her negligence. If the petitioners are not ready to honour the compromise, then what would be the result of the case.

6. Whenever an offence is being committed, two kinds of activities of an accused is being perceived. The first one, being directly involved during course of commission of an occurrence and the second one indirect involvement. Indirect involvement always happens to be by way of different mode, may be an abettor, conspirator, member of an unlawful assembly, sharing common intention/common object with the main accused.

7. In likewise manner, there happens to be proper consideration over commission of an occurrence. It may be by one stroke of time or it may be continuing one. All the events have to be considered in the background of nature of allegation as levelled. It varies from case to case depending upon the facts so enumerated.



8. So far matrimonial matter is concerned, it has to be seen through different angle, and the same has also been consistently held by the Apex Court and that happens to be reason behind that irrespective of an offence under Section 498(A) IPC, nor compoundable whenever family status is referred, prosecution is being quashed.

9. In likewise manner, irrespective of the fact that girl after marriage has to leave her parental house with a permanent establishment at her *Sasural* by way of precedence, denial thereof, would not be a continuing offence and in likewise manner even the other family members that the husband did not take initiative having their presence in the house would not be considered to be an abettor or seeing the commission of an offence being cognizable did not inform the police would not liable them for criminal prosecution.

10. That means to say, before going to nip the prosecution much less at any initial stage, those events require minute observation, apart from having proper identification of vicarious liability. And that happens to be the reason behind that jurisdiction of prosecution of an accused has been extended by the Apex Court in ***Rupali Devi v. State of UP*** reported in ***2019(2) PLJR 255 (SC)*** extending the ambit and scope of



Section 179 of the Cr.P.C. That means to say, staying at her Maika as an impact of torture justifies the prosecution within the jurisdiction whereunder her *Maika* lies.

11. If such principle is considered in its broadness then in that circumstance, all the family members having day to day access would be attracted within criminal prosecution, in case, even there active involvement is not shown, and by their act of admission, they allowed the offence to continue.

12. During consideration of the same the court has only to see their status, that means to say, whether the accused has got an opportunity of frequent access in the family. If there happens to be no remote feasibility then in that circumstance, their prosecution would not be justifiable. And, that happens to be reason behind that some sort of relaxation has been allowed to the plea of married *Nanad*, the other accused who have got no frequent access to the family. That means to say, when the Apex Court considered and allowed prosecution in terms of Section 179 of the Cr.P.C. then in that circumstance, could not it be said that till stay of the complainant/victim at *Maika* away from matrimonial place out of torture/cruelty be a continuing offence.

13. In ***Smt. Sugata Mukherjee v. Prashant Kumar***



Mukherjee reported in ***1997 CrLJ 2985***, it has been held by the

Apex Court as follows:-

“7. Despite service being effected on the private respondents, no one has appeared for any of the accused respondents. We have taken into consideration the complaint filed by the appellant and it appears to us that the complaint reveals a continuing offence of mal treatment and humiliation meted out to the appellant in the hands of all the accused-respondents and in such continuing offence, on some occasions all the respondents had taken part and on other occasion, one of the respondents had taken part. Therefore, Clause (c) of Section 178 of the CrPC is clearly attracted. We, therefore, set aside the impugned order of the High Court and direct the learned Chief Judicial Magistrate, Raipur to proceed with the criminal case. Since the matter is pending for long, steps should be taken to expedite the hearing. The appeals are accordingly allowed.

14. In ***Arun Vyas v. Anita Vyas*** reported in ***(1999) 4***

SCC 690, it has been held as follows:-

“13. The essence of the offence in Section 498A is cruelty as defined in the explanation appended to that section. It is a continuing offence and on each occasion on which the respondent was subjected to cruelty, she would have a new starting point of limitation. The last act of cruelty was committed against the respondent, within the meaning of the explanation, on October 13, 1988 when, on the allegation made by the respondent in the complaint to Additional Chief Judicial Magistrate, she was forced to leave the matrimonial home. Having regard to the provisions of Sections 469 and 472 the period of limitation commenced for offences under



Sections 406 and 498A from October 13, 1988 and ended on October 12, 1991. But the charge-sheet was filed on December 22, 1995, therefore, it was clearly barred by limitation under Section 468(2)(c) Cr.P.C.

15. In the background of aforesaid discussions, principle laid down by the Apex Court as referred above, now the allegation has to be seen. As per narration, it is the case of the OP No.2 that when she came to her Sasural on marriage with Md. Imran @ Mannu, all the accused so named thereunder, began to harass her in order to facilitate procurement of Rs. 5 Lacs so that, a business establishment should be installed along with purchase of washing machine as well as a motorcycle whereupon, she was mercilessly beaten by her husband and during course thereof, other accused persons abetted him. Then thereafter, there happens to be detailed description as to how she got herself treated after staying at her *Maika* after having been thrown out from her *Sasural*.

16. It is further averred that after some time, she anyhow came back but again in the first week of March 2014, she has been given the same treatment whereupon, she came back to her *Maika* where she is undergoing treatment. They have tried to reconcile the matter but, on account of insistence of the accused person for having Rs. 5 Lacs, did not materialize



and that being so, lastly this case has to be filed. Although, statement of other witnesses has not been annxed, however, SA is there and from the SA, it is apparent that there happens to be specific disclosure that the mother-in-law, father-in-law, Devar, Nanad and husband tortured her for procurement of Rs. 5 Lacs and having denied at the end of the complainant, they instigated her husband as a result of which, she was assaulted times without number. She returned back to her Maika and during course of treatment after X-ray, the bone of rib has been found fractured. After treatment, she on her own, has gone to her Sasural where again, she has been subjected similar kind of treatment. On Court's question, she has disclosed that she is ready to live at her Sasural but with some assurance.

17. In the aforesaid facts and circumstances, coupled with the principles laid down by the Apex Court, I do not see it a fit case whereunder order of cognizance require interference. That being so, the instant petition sans merit and is accordingly, dismissed.

(Aditya Kumar Trivedi, J)

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