

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.39518 of 2013

Arising Out of PS. Case No.-27 Year-2007 Thana- CHHATAUNI District- East Champaran

1. Manoj Singh @ Manoj Kumar Singh S/O late Keshav Prasad Singh Resident Of Village Karma Tola Behind Pashu Chikitsalaya Near Nawada Chowk, P.S. Nawada, District Ara.
2. Arvind Singh @ Arvind Kr. Singh S/O Late Keshav Prasad Singh Resident Of Village Karma Tola Behind Pashu Chikitsalaya Near Nawada Chowk, P.S. Nawada, District Ara.
3. Dipu @ Navnee Kumar S/O Late Keshav Prasad Singh Resident Of Village Karma Tola Behind Pashu Chikitsalaya Near Nawada Chowk, P.S. Nawada, District Ara.
4. Madhu W/O Sri Arvind Singh Resident Of Village Karma Tola Behind Pashu Chikitsalaya Near Nawada Chowk, P.S. Nawada, District Ara.
5. Neha D/O Sri Arbind Singh Resident Of Village Karma Tola Behind Pashu Chikitsalaya Near Nawada Chowk, P.S. Nawada, District Ara.
6. Shanti Devi @ Sahuti Devi W/O Bindeshwar Singh Resident Of Village Karma Tola Behind Pashu Chikitsalaya Near Nawada Chowk, P.S. Nawada, District Ara.
7. Ramesh Kumar S/O Bishundeo Prasad Resident Of Mahatma Gandhi Nagar, P.S. Agamkuan, District Patna.
8. Sangita @ Munni W/O Ramesh Prasad Resident Of Mahatma Gandhi Nagar, P.S. Agamkuan, District Patna.
9. Baby W/O Shiv Narayan Singh Resident Of Ganga Vihar Colony, P.S. Beur, District Patna.

... .. Petitioner/s

Versus

1. The State Of Bihar
2. Sangeeta Singh D/O Late Dr. R.N. Singh C/O B.B. Rao, Bhawanipur Jirat, P.S. Chhatauni, District East Champaran.

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr. Ajay Kumar Thakur with Mr. Nilesh Kumar and Mr Ravi Kumar, Advocates
For the State	:	Mr. Jharkhandi Upadhyay, APP
For the O.P.	:	None

CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH
ORAL JUDGMENT

Date : 14-02-2019

Heard learned counsel for the petitioners and learned

A.P.P. for the State.



2. Despite service of notice on Opposite Party No. 2, none appeared on her behalf when the matter was taken up and heard.

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 dated 30.7.2013 passed by the learned Subdivisional Judicial Magistrate, East Champaran at Motihari in Tr. No. 1851/13 arising out of Chhatauni P.S. Case No. 27/07 by which he rejected the petition filed by the petitioners under sections 239 of the Code of Criminal Procedure for not framing charge against them for the offence under section 323, 379, 498A/34 of the Indian Penal Code and section 3/4 of the Dowry Prohibition Act.”

4. The petitioner no. 1 is the husband of Opposite Party No. 2; petitioners no. 2 and 3 brothers of petitioner no. 1; petitioner no. 4, the wife of petitioner no. 2; petitioner no. 5 the daughter of petitioner no. 2; petitioner no. 6 aunt of the petitioner no. 1; petitioners no. 8 and 9 sisters of the petitioner no. 1 and petitioner no. 7 husband of petitioner no. 8.

5. The allegation against the petitioners is of torture and demand of dowry. However, with regard to the husband, i.e.,



petitioner no. 1; his brother petitioner no. 2; his wife petitioner no. 4 and brother-in-law petitioner no. 7, it is specific of torture, taunt and demand of dowry by way of a car and also of embezzlement of Rupees Four Lakhs given to be invested in the name of Opposite Party No. 2 in fixed deposit. Further, there is also general allegation against the remaining petitioners. The Opposite Party No. 2 has further alleged that the gold earrings and ring which were given to her by mother and kept in her purse along with Rs. 4,000/- cash, were stolen in the matrimonial home.

6. Learned counsel for the petitioners submitted that the case has been filed after six years and admittedly the Opposite Party No. 2 herself has deserted the matrimonial home and is living with the mother. Learned counsel submitted that it appears that the Opposite Party No. 2 wants divorce from the petitioner no. 1 and for this reason, this false case has been instituted. Learned counsel further submitted that the petitioners are innocent and in fact by implicating the sisters and another brother of the petitioner no. 1 at the very fag end of the *fardbeyan*, clearly an attempt has been made to misuse the process of the Court by falsely implicating all the members of the family.

7. Learned A.P.P. submitted that there is specific allegation against at least petitioner no. 1, his brother and his wife



and brother-in-law. However, he was not in a position to counter the submission of learned counsel for the petitioners that against the others there is hardly any substance in the allegations.

8. Having considered the facts and circumstances of the case and submissions of learned counsel for the parties, the Court finds that at least with regard to petitioners no. 3, 5, 6, 8 and 9, the contention on their behalf that there is hardly any material to justify the case against them, is correct and, thus, the Court finds that they are entitled to relief. From the entire reading of the *fardbeyan*, the allegation against them is only in passing terms and only at the end their names have been taken and further, the entire family of the husband of the Opposite Party No. 2 has been named which the Court does not find justified.

9. Accordingly, the application on behalf of petitioners no. 3, 5, 6, 8 and 9 stands allowed. The entire criminal proceeding arising out of Chhatauni P.S. Case No. 27 of 2007 (Tr. No. 1851 of 2013), including subsequent orders which may have been passed, as far as petitioners no. 3, 5, 6, 8 and 9 are concerned, stand quashed.

10. Coming to the remaining petitioners, the petitioner no. 1 is the husband, the petitioner no. 2 his brother, petitioner no. 4 wife of the said brother and petitioner no. 7 the brother-in-law of



petitioner no. 1, against whom there are specific instances of wrong doing, which, in the opinion of the Court, cannot be said to be either cosmetic or exaggerated. Further, the Court finds the *fardbeyan* written in the own hand of the Opposite Party No. 2 is detailed, elaborate and the sequence narrated, appears to be quite natural and believable. Thus, it cannot be said that the allegation of maltreatment and the way the concerned petitioners having acted with regard to cash given in her name and the demand for a car and also the theft of gold earrings, ring and cash from her purse, are frivolous, unbelievable or cosmetic, at least at this stage. However, such view is only with regard to forming a *prima facie* opinion for the purpose of considering the prayer made in the present application.

11. Accordingly, the application on behalf of petitioners no. 1, 2, 4 and 7 stands dismissed.

(Ahsanuddin Amanullah, J)

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