

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.77904 of 2019

Arising Out of PS. Case No.-577 Year-2015 Thana- EAST CHAMPARAN COMPLAINT
District- East Champaran

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1. Lalita Sharma, aged about 58 years, Female, wife of Ram Lakhan Sharma
 2. Ram Lakhan Sharma, aged about 60 years, Male, Son of Late Ram Prasad Thakur, both resident of Village - Phulkaha, P. S.- Shyampur Bhathha, Distt - Sheohar Bihar presently W.U.Z 93A, Narayan P.S.- Narayan, New Delhi 110028

... .. Petitioner/s

Versus

1. The State of Bihar
2. Jyoti Kumari, aged about 23 years, Female, Wife of Sanjay Sharma, D/o Gagandeo Sharma, Resident of Village - Phulkaha, P. S.- Shyampur Bhathha, Distt - Sheohar presently resident of Village - Ahiraulia, P.S.- Chakiya, Distt - East Champaran.

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr.Sheikh Arkan Ahmad, Advocate
For the State : Mr.H.A. Khan, A.P.P.

CORAM: HONOURABLE MR. JUSTICE ANJANI KUMAR SHARAN
ORAL ORDER

2 02-12-2019 Heard learned counsel for the petitioners and the learned
A.P.P. for the State.

2. The present application has been filed for quashing the order dated 11.04.2016 passed by Alok Kumar Pandey, Sub Divisional Judicial Magistrate (Sadar), Motihari in connection with Complaint Case No.577 of 2015/ Inquiry No.517 of 2016 and Trial No.1330 of 2018, whereby cognizance has been taken against the petitioners for the offence under Section 498(A) of the Indian Penal Code and Sections 3/4 of Dowry Prohibition Act.

3. Complaint case, in brief, is that one Jyoti Kumari filed a Complaint Case before the C.J.M., Motihari on 01.04.2015 and as stated therein that Jyoti Kumari was married with Sanjay Sharma on



30.05.2014 according to Hindu rites custom. Thereafter, the complainant went to her matrimonial home on 10.06.2014 and thereafter, she went to New Delhi where her husband was working as Software Engineer and after this she was demanded one car or seven lac as dowry and due to non fulfilment of the said demand then all the family of her matrimonial home committed cruelty and torture to the victim. It is further stated that the father and brother of complainant intervened and tried to pacify the matter but the matter was not patched up between the informant against Bhaisur to be slept with her then in the meantime all the accused persons ousted to the victim on 09.11.2014 from that day the victim have been living in her Maikie till today.

4. The complainant and two other witnesses whose statements were recorded under Section 202 of the Code of Criminal Procedure have also supported the allegation made in the complaint.

5. Taking into consideration the aforesaid fact, the learned Magistrate finds a prima facie case as made out under Section 498A of the IPC and Sections 3/4 of the Dowry Prohibition Act. By order dated 11.04.2016, the learned Magistrate has taken cognizance and summoned the accused persons for appearance on 11.05.2016. The said order is under challenge before this Court.

6. It has been submitted by learned counsel for the petitioners that the allegations made in the complaint are totally false. There are general and omnibus allegations in nature. As a matter of



fact, the petitioners filed a petition under Section 9 of the Hindu Marriage Act for restitution of his conjugal life but she appeared on notice and she received litigation expenses of Rs.11,000/- on 26.09.2016 and thereafter, the respondent also appeared on 22.07.2017 and thereafter, 4 dates by the Court but the respondents did not appear that is why she did not want to live with her husband then the Restitution Petition was withdrawn by the petitioner.

7. On the other hand, learned counsel for the State has submitted that the defence of the petitioners can be examined only at the stage of the trial.

8. Learned counsel for the State submits that in any event, this is very early stage wherein only cognizance has been taken on the basis of finding a prima facie case against the petitioners. He relies on the decision in **1996 Criminal Law Journal 2448 (SC) (State of Maharashtra and others vrs. Som Nath Thapa and others)** to contend that the test of prima facie case has to be applied at the stage at which the Court is required to consider the question of framing of charge, therefore, the level of satisfaction at the stage of taking cognizance is of an even lower standard. He also relies on **AIR 1971 SC 1389 (Balraj Khanna and others vrs. Moti Ram)** for the same proposition.

9. I have heard learned counsel for the parties and perused the record.

10. Admittedly, there are serious allegations made in the



complaint against the petitioners. The veracity of such allegation cannot be taken into consideration at this stage for the purpose of quashing of order of taking cognizance. The defence, if any, is to be considered by the Court either at the stage of framing of charge or at the stage of trial.

11. In that view of the matter, I find no illegality in the impugned order passed by the court below.

12. Accordingly, this application is dismissed.

13. However, the petitioners would be at liberty to raise all the points available to them at the stage of framing of the charge.

(Anjani Kumar Sharan, J)

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