

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.6146 of 2022

Arising Out of PS. Case No.-36 Year-2021 Thana- MAHILA P.S. District- Banka

-
-
1. Varun @ Varun Kumar Arya son of Kishore Kumar Arya Resident of 101, E Town Sivabhi Luxuria, Makarpura, Main Road, Manoja, Barodra, Gujarat.
 2. Basanti Arya Wife of Kishore Kumar Arya Resident of 101, E Town Sivabhi Luxuria, Makarpura, Main Road, Manoja, Barodra, Gujarat.
 3. Kishore Kumar Arya Son of Late Shiva Nand Arya Resident of 101, E Town Sivabhi Luxuria, Makarpura, Main Road, Manoja, Barodra, Gujarat.
 4. Swati Arya Daughter of Kishore Kumar Arya Resident of 101, E Town Sivabhi Luxuria, Makarpura, Main Road, Manoja, Barodra, Gujarat.

... .. Petitioners

Versus

1. The State of Bihar
2. Ankita Kumari Daughter of Pramod Das Resident of Deo Bhawan, Ward No. 7, P.S.- Amarpur, District - Banka.

... .. Opposite Parties

Appearance :

For the Petitioners	:	Mr. Dhananjay Kumar Pandey, Advocate
For the State	:	Mr. Arun Kumar, APP
		Mr. Jharkhandi Upadyay, APP
For O.P. No. 2	:	Mr. Prahlad Kumar Bhagat, Advocate

CORAM: HONOURABLE MR. JUSTICE SANDEEP KUMAR
ORAL JUDGMENT

Date : 24-11-2022

Heard the parties.

2. The present application has been filed for quashing the First Information Report bearing Banka Mahila P.S. Case No. 36 of 2021 registered under sections 498 (A) and 406/34 of the Indian Penal Code and Sections 3/4 of the Dowry Prohibition Act.

3. The prosecution case, in brief, is that the informant, namely, Ankita Kumari was married with one Varun @ Varun

Kumar Arya (petitioner no.1) on 07.05.2021. The father of the informant gave ornaments, clothes and other articles in the marriage ceremony. It has been stated in the FIR that the informant was taken by her husband in the matrimonial house where she stayed for ten days with her husband and during that period she was tortured mentally and physically and demand of Rs.30,00,000/- (Rupees thirty lakhs) was made to her. If the dowry demand was not fulfilled, she would be thrown out and she was forced to live in the matrimonial house. The husband of the informant, mother-in-law, father-in-law and sister-in-law (Nanad) used to torture her. When the informant's father went to mediate the matter on 11.06.2021 then the accused persons misbehaved with him and again demanded the dowry. Thereafter, husband (petitioner no.1) left for Dubai and thereafter, he did not contact with the informant and her family members.

4. On 05.07.2021, the informant made a complaint before the Station House Officer, Mahila Police Station, Banka who tried to mediate the matter but mediation also failed. Petitioner no.1 abused the informant and made demand of a house in "**Dubai**". Again, the husband and his family members were demanding Rs.30,00,000/- (Rupees thirty lakhs) and a flat

in “*Dubai*”.

5. I have heard the counsel for the parties.

6. Learned counsel for the petitioners has submitted that petitioner no. 1 is the husband of the informant, petitioner no. 2 is the mother-in-law of the informant, petitioner no. 3 is the father-in-law of the informant and petitioner no. 4 is the sister-in-law (Nanad) of the informant. It has further been submitted that the marriage was to be solemnized initially on 07.05.2021 in Kurseong, West Bengal, but due to pandemic Covid-19 situation, the marriage function was cancelled and marriage between husband and wife was registered on 07.05.2021 but the girl did not go to the matrimonial house as both the parties were aware of the fact that until social marriage as per Hindu ritual was solemnized in the society, a family does not allow the husband and wife to live together. It has further been submitted that the petitioner no.1 and the informant never stayed together because the informant had suffered from Corona though she stayed in the house of the petitioners for ten days. The informant was taken away by her family members after recovery from Corona and the husband (petitioner no.1) also joined his duty. Petitioner no.1 is an Engineer working in Dubai and the opposite party no.2 is also an I.T. Engineer in

Bangalore. Parties decided to part ways and pursuant to private mediation, the family members of the petitioners returned the items gifted in the marriage, golden jewelry and the balance amount which was given to the petitioners on the occasion of marriage but the informant did not return anything. It has further been contended that the petitioner no.1 has filed an application for Divorce/Cancellation of marriage before the Family Judge, Vadodara which has now been transferred from Vadodara to Banka pursuant to the order passed by the Apex Court.

7. It has been submitted by learned counsel for the petitioners that allegations against the entire family members of the petitioners is false and concocted and it is nothing but an outcome of failed marriage.

8. Learned counsel for the informant has submitted that informant has been tortured by the petitioners and thrown out of her matrimonial house and this is not the stage for considering the defence of the accused persons. He has further submitted that F.I.R. can be quashed in exceptional circumstances only if from reading of the F.I.R., no offence is made out and/or the F.I.R has been instituted to wreck vengeance upon the accused persons.

9. Considered the submissions of both the parties.

10. So far as the petitioners are concerned, they have sought quashing of F.I.R on the ground that the marriage has failed, a divorce petition was filed earlier and the allegations are false. This Court will not examine the truthfulness of the allegations levelled against the accused persons at this stage. An F.I.R cannot be quashed on the basis of affidavits as has been held by the Supreme court in the case of ***State of Bihar & another Vs P.P. Sharma, IAS and another*** reported in ***1992 Supp (1) SSC 222***.

11. From reading of the F.I. R, *prima facie* it appears that offences are made out against petitioner nos.1 to 3 and the F.I.R cannot be quashed so far as the petitioner nos.1 to 3 are concerned.

12. With regard to petitioner no. 4, namely, Swati Arya who is a married sister-in-law (Nanad) of the informant, considering the law laid down by the Supreme Court in the case of ***Preeti Gupta and another Vs State of Jharkhand and another*** reported in ***(2010) 7 SCC 667***, her application for quashing is allowed. Accordingly, the entire prosecution including F.I.R. bearing Banka Mahila P.S. Case No. 36 of 2021 is hereby quashed as against petitioner no.4, namely, Swati Arya.

13. The prayer for quashing of F.I.R of petitioner nos.1, 2 and 3, namely, Varun @ Varun Kumar Arya, Basanti Arya and Kishore Kumar Arya is rejected.

14. This Court gives liberty to petitioner nos.1, 2 and 3, namely, Varun @ Varun Kumar Arya, Basanti Arya and Kishore Kumar Arya to raise their objections with regard to the allegations at the time of framing of charge before the trial court if the charge-sheet is submitted by the police.

15. In view of the above, the quashing application is partly allowed.

(Sandeep Kumar, J)

Harsh/BT

AFR/NAFR	NAFR
CAV DATE	27.07.2022
Uploading Date	25.11.2022
Transmission Date	25.11.2022