

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.87382 of 2019

Arising Out of PS. Case No.-142 Year-2016 Thana- MAGADH MEDICAL COLLEGE
District- Gaya

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1. SANJIV KUMAR S/o Rajdeo Singh Resident of Road No. 9, Magadh Colony, P.S.- Magadh Medical, District- Gaya
 2. Nilam Prasad W/o Rajdeo Singh Resident of Road No. 9, Magadh Colony, P.S.- Magadh Medical, District- Gaya
 3. Rajdeo Singh S/o Late Chuhi Singh Resident of Road No. 9, Magadh Colony, P.S.- Magadh Medical, District- Gaya

... .. Petitioner/s

Versus

1. THE STATE OF BIHAR
2. Neha Narayan D/o Devendra Narayan Resident of House No. 17, Road No. 1 A, A.P. Colony, P.S.- Rampur, District- Gaya

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Ranjan Kumar Sinha
For the Opposite Party/s : Mr.Md. Mushtaque Alam
M/s. Durgesh Nandan & Manisha Prakash

CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR SINGH
ORAL ORDER

4 12-05-2022 Heard learned counsel for the petitioners, the State
and the opposite party No.2.

The petitioners have filed this application for quashing the order dated 18.10.2019 passed by the learned Sub Divisional Judicial Magistrate, Gaya in G.R. case No. 3518/2016, arising out of Magadh Medical P.S. case No. 142/2016, registered u/s 498(A) of the IPC and u/s 3/4 of Dowry Prohibition Act whereby and whereunder discharge petition filed by the petitioners under Section 239 of the Code of



Criminal Procedure has been dismissed.

It is pertinent to mention here that earlier the petitioners have filed a petition before this court vide Cr. Misc. No. 39094/2017 u/s 482 of the Cr. P. C., which was allowed vide order dated 11.09.2018 with a direction to the S.D.J.M., Gaya to consider the petition of the petitioners u/s 239 of the Cr. P. C. afresh. Pursuant to order of this court dated 11.09.2018 passed in Cr. Misc. No. 39094/2017, a fresh petition dated 27.10.2018 u/s 239 of the Cr. P. C. was filed on behalf of the petitioners with a prayer to discharge them in the case. Rejoinder to the petition was also filed on 29.10.2018 praying therein to dismiss the petition and after hearing the parties the impugned order dated 18.10.2019 came to be passed.

Petitioner No.1 is Devar, petitioner No.2 is mother-in-law and petitioner No.3 is father-in-law of the informant. The prosecution case in brief is that the informant was married with Rajiv Kumar on 01.12.2014. It is alleged that at the time of marriage Rs. 15 lakh (9 lakh through cheque and 6 lakh through cash) was given to petitioner No.3 apart from gold articles worth Rs. 5 lakh. It is further alleged that after few days of marriage mother-in-law, petitioner No.2, demanded four wheeler car and thereafter petitioner No.1 and husband of



informant started abusing and harassing father of informant for dowry. After some time husband of the informant took her to Pune and there also she was assaulted and abused for dowry. Lastly, she was sent back to Gaya with her maternal uncle on 22.01.2015. In order to pacify the issue Panchayati was also held but there also her father was abused and beaten by the accused persons. The police after investigation submitted charge sheet u/s 498(A) of the IPC and u/s 3/4 of Dowry Prohibition Act against the petitioners and others and thereafter cognizance was taken under the aforesaid Sections. Thereafter, discharge petition was filed before learned S.D.J.M. but the same was also dismissed by the impugned order dated 18.10.2019.

Learned counsel for the petitioners submits that the learned Magistrate without applying his judicial mind on the materials available on record passed the order in most arbitrary and illegal manner. It is submitted that during investigation not a single independent witness supported the allegation against these petitioners and discharge petition of the petitioners has been dismissed by the court below without appreciating the materials in its true perspective. It is submitted that three communications, including two legal notices, sent to informant by her husband requesting her to live a happy conjugal life or to



have divorce were not taken into consideration. It is further submitted that in the entire FIR there is general and omnibus allegation against these petitioners and no specific role has been attributed to these petitioners. Petitioners No.2 and 3 are old in-laws of the informant and they are living separately since long back. It is further submitted that no date and time of occurrence has been indicated in the FIR. It is next submitted that in cases where entire family has been made accused with general and omnibus allegation and there is nothing specific, such prosecution may be quashed. In support of his submission learned counsel for the petitioner has placed reliance upon paragraph 18 of the judgment of the Apex Court reported 2022 Live Law (SC) 24, which reads thus:-

“18. The above-mentioned decisions clearly demonstrate that this court has at numerous instances expressed concern over the misuse of [section 498A](#) IPC and the increased tendency of implicating relatives of the husband in matrimonial disputes, without analysing the long term ramifications of a trial on the complainant as well as the accused. It is further manifest from the said judgments that false implication by way of general omnibus allegations made in the course of matrimonial dispute, if left unchecked would result in misuse of the process of law. Therefore, this court by way of its judgments has warned the courts from proceeding against the relatives and in-laws of the husband when no prima facie case is made out against them”.

In view of the aforesaid facts, it is submitted that the



impugned order is absolutely illegal and not sustainable in the eye of law.

Learned counsel for the State and the O.P. No.2 vehemently opposed the petition and submitted that after perusing the materials collected during the course of investigation, including the statement of witnesses, the learned Magistrate passed the impugned order which does not require any interference by this court.

Considering the rival submissions of the parties and having gone through the materials available on record, this court is of the opinion that there is no infirmity in the impugned order. At the stage of framing of charge the trial court is not required to go into merit of the case and based on evidence whether the accused is likely to be convicted or not are not to be seen. At this stage the court is also not required to embark upon an enquiry to test the veracity of the averments made in the FIR. The court is also not required to reiterate or repeat the materials perused by the court and the court is only required to see whether there is sufficient ground for proceeding against the accused or not and reasons are not required to be assigned while framing of charge against the accused persons.

From reading of the complaint, it cannot be held that



even if the allegations are taken as proved, no case is made out. There are allegation against the petitioners of harassing the informant which forced her to leave the matrimonial house. The question whether the informant has in fact been harassed and treated with cruelty is matter of trial but at this stage it can not be said that no case is made out.

The decision referred by counsel for petitioners is distinguishable. In the present case the factual matrix is different from the said case. In this case specific role has been attributed against these petitioners in the written report. Applying the settled principles, it can not be said that there is no triable case against the petitioners.

In the instant case it is apparent that after going through the written statement of informant and statement of witnesses in paragraph 5,6 and 7 of case diary the court below being satisfied that there is sufficient material to proceed against the accused persons ordered for framing of charge against them.

In view of discussion made above, no case is made out for interfering with the impugned order. This application is,



accordingly, dismissed.

(Prabhat Kumar Singh, J)

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