

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.2790 of 2017

Arising Out of PS. Case No.-2790 Year-2016 Thana- PATNA COMPLAINT CASE District-
Patna

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1. Minu Singh, W/o Late Ashok Singh,
 2. Gaurav Singh S/o Late Ashok Singh, Both R/o B/178, P.C. Colony, Kankarbagh, P.S.- Kankarbagh, District- Patna.

... .. Petitioner/s

Versus

1. The State of Bihar Through The Principal Secretary, Home Department, Government Of Bihar, Old Secretariat
2. Shalini Kumari Singh @ Shalini Singh, W/o Saurav Singh, R/o Mohalla- P.O. P.S. - Lohia Agar, Mount Carmel High School , Kankarbagh, Patna-20, presently residing at A-12, Ashiyana Nagar-1, P.S.- Rajeev Nagar, District- Patna.

... .. Respondent/s

Appearance :

For the Petitioner/s : Ms. Vagisha Pragya Vacaknavi, Adv
For the Respondent/s : Mr. Sheo Shankar Prasad, SC-8

CORAM: HONOURABLE MR. JUSTICE BIBEK CHAUDHURI
CAV JUDGMENT

Date : 22-03-2024

1. The petitioners have invoked the constitutional writ jurisdiction of this Court, praying for quashing of the order of cognizance and all subsequent proceedings, in connection with Complaint Case No. 2790 (C) of 2016.

2. The petitioners are the mother-in-law and brother-in-law of the Opposite Party No. 2, who are facing trial for commission of offence under Section 498A of the IPC read with Section 4 of the Dowry Prohibition Act, 1961.

3. It is not in dispute that marriage of the Opposite



Party No. 2 was solemnized on 24th of May, 2013 with one Gaurav Singh, another son of the Petitioner No. 1. The Opposite Party No. 2, being the wife of Gaurav Singh, lodged a Court complaint on 27th of August, 2016, stating, *inter alia*, that she was treated with cruelty at her matrimonial home by the petitioners. It is stated by the Opposite Party No. 2 in her complaint that at the time of marriage, her father spent, in all, a sum of Rs. 45 lakhs. Out of the said 45 lakhs, a sum of Rs. 20 lakhs was paid to the complainant/Opposite Party No. 2 for her further studies. But the petitioners as well as the husband of the complainant tried to grab the said money. On much pursuation, the said amount of 20 lakhs was deposited in the bank account of the complainant in the month of December, 2013. Thereafter, the accused persons/petitioners and her husband pressurized her to bring a sum of Rs. 20 lakhs from his father, saying that such amount was spent by the accused persons in her marriage with one of the sons the Petitioner No. 1. In the meantime, the petitioner became pregnant. The accused persons constantly put her in mental torture to abort the baby in her own womb. She denied to such illegal and immoral proposal of the petitioners. Somehow, she managed to bear the torture. At times, she was thinking to commit suicide. However, in the matrimonial home,



she was helped by her sister-in-law (wife of the Petitioner No.2), Namita Singh and as she stood by her side like a rock, the petitioner was able to give birth to a male child on 27th November, 2014. Subsequently, the complainant was thrown out of her house on 29th of July, 2016. She returned to her parental home at Ashina Nagar. It was also submitted by the complainant that the mother-in-law, the complainant, snatched away all her gold articles, cloths and other valuables from her possession.

4. The petitioners, on the other hand, contended that the father of the Petitioner No. 2 and husband of Petitioner No. 1 established educational institutions in Patna and Gaya. The educational institutions established by the husband of Petitioner No. 1, Ashok Singh flourished a lot. After death of Ashok Singh, the Petitioner No. 1 was looking after the management of the said academic institutions. The said academic institutions in Patna and Gaya were recognized by the general people as good academic institutions. The Petitioner No.1 has substantial earning from the said academic institutions. After marriage of the son of the Petitioner No.1, Gaurav Singh with the complainant, the petitioner from the very beginning had greedy eye over the family property. She, with the help of her sister-in-law, i.e., the wife of the Petitioner No. 2, namely, Namita Singh



tried to grab the said property and insisted upon their husbands to transfer into them their shares in the property. When the petitioners denied to accept such proposal of the complainant, she has lodged the complaint with absolutely false allegation.

5. The complainant came to know from some unknown sources that the petitioners would sell their joint family properties. So, she filed a suit for partition in the name of her minor son, which is registered as T.P.S. 129 of 2016 in the competent Court of civil jurisdiction.

6. It is submitted on behalf of the petitioners that the complainant joined hands with Namita Singh to disturb the family affairs by claiming separate share in the income coming from the educational institutions, although, they never extended any help to the development of such institutions. The development of the institution was done singularly by the Petitioner No. 1 and whatever be the earnings through the educational institutions is the self-acquired property of the Petitioner No. 1. The complainant started all sorts of problem in the family after the death of Ashok Singh, the husband of the Petitioner No. 1 and the father of the petitioner no. 2. In the absence of Ashok Singh, the father of the complainant, Raj Kishore Rai and one of his relatives, namely, Yuvraj Singh tried



to intrude upon the family affairs of the petitioners. They also threatened the Petitioner No. 1 that they would not allow her to run the school business.

7. When all such problems cropped up after the death of the aforesaid Ashok Singh, the husband of the complainant made an informatory statement before the learned Chief Judicial Magistrate, Patna, which was registered as Information Petition No. 3356 of 2015. The husband of the complainant also filed a suit for restitution of conjugal rights under Section 9 of the Hindu Marriage Act before the learned Principal Judge, Family Court at Patna, which was registered as Matrimonial Case No. 87 of 2016 on 23rd of January, 2016. After filing of the suit for restitution of conjugal rights, the petitioner filed the Complaint Case No. 2790(C) of 2016 in which the learned Sub-Divisional Judicial Magistrate, Patna took cognizance of offence under Section 498A of the IPC and Section 4 of the Dowry Prohibition Act on 4th of February, 2017 against the petitioners and one Gaurav Singh, husband of the complainant.

8. In spite of service of notice, the Complainant / Respondent No. 2 did not appear to contest the instant writ petition.



9. I have heard the learned Advocate for the petitioners and the learned Advocate on behalf of the State of Bihar.

10. Having heard the learned counsels and on careful perusal of the entire materials on record, it appears to this Court that the grievance of the complainant against the petitioners are three folds :-

(i) The petitioners had kept a sum of Rs. 20 lakhs which was given by her father for her further studies. However, the complainant herself admitted that the said amount was deposited in her bank account in the month of December, 2013;

(ii) The complainant made her grievance regarding mental torture, alleging, *inter alia*, that the Petitioner No. 1 made allegations about her character and sometimes in August, 2013, the accused persons demanded dowry of Rs. 20 lakhs. Except an omnibus and vague allegation, as stated above, the complainant did not make any substantial complaint, mentioning the date, time and the specific words allegedly used by the Petitioner No. 1, making allegation against her character and demand of Rs. 20 lakhs.

(iii) The accused persons insisted upon her to abort her baby in her womb. Here also, the allegation is omnibus



because of the fact that except the general allegation, the complainant did not specify the date, time and manner, by which the accused persons allegedly insisted upon her to abort her baby.

11. Explanation to Section 498A IPC defines “Cruelty”.

“Cruelty” for the purpose of Section 498A means:-

“(a) any wilful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman; or

(b) harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand.”

12. In ***Girdhar Shankar Tawade v. State of Maharashtra***, reported in ***(2002) 5 SCC 177***, it is held by the Hon’ble Supreme Court that in any event the willful act or conduct within the meaning of explanation (a) to Section 498A ought to be the proximate cause in order to bring home the charge under Section 498A and not de hors the same. An



allegation by the wife that due to torture she was thinking to commit suicide is not in a “to have an event sometime back cannot be termed to be a factum taken note of the matter of a charge under Section 498A”. In the instant case, the complainant did not come forward with any factual incident proximate to the filing of the complaint, alleging that such willful conduct by the accused persons was likely to drive the complainant to commit suicide.

13. Section 498A was added with a view to punishing a husband and his relatives to harass and torture the wife to coerce or her relatives to satisfy unlawful demands of dowry. The complainant stated that the petitioners demanded a sum of Rs. 20 lakhs from her father. The date and time of such demand has not been stated by the complainant in her complaint.

14. The legislative intent is clear to indicate in particular reference to explanation (b) that there shall have to be a series of acts in order to be a harassment within the meaning of explanation (b).

15. On the other hand, it is found from the record that the bone of contention between the parties is having the share in the family property of the accused persons. The



petitioners in her suit for partition mentioned the worth of family property of the petitioners as Rs. 121 crores in order to get the share in family property. The dispute cropped up between the parties. The complainant used to put pressure upon her husband and similarly Namita Singh, the wife of Petitioner No. 2 used to insist upon her husband to transfer their share in the family property in their names. The entire dispute cropped up when the petitioners did not want to part with the joint family property and joint family business.

16. In *Ritu Tomar vs. State of U.P & Ors.*, reported in **2023 SCC OnLine SC 473**, the Hon'ble Supreme Court on the factual background that the complaint filed under Section 498A of the IPC was the result of family dispute between the members of family of the complainant and the accused persons, was pleased to quash the complaint under Section 498A of the IPC, which was registered under Section 156(3) of the Cr.P.C.

17. Having gone through the entire facts and circumstances and materials in record, it appears to this Court that the criminal proceeding being Complaint Case No. 2790 (C) of 2016 is manifestly attended with mala fide and the proceeding was maliciously instituted with an ulterior motive for wrecking vengeance on the accused and with view to spite



them due to private and personal grudge. In the instant case, it is sufficiently established that the complainant has lodged the complaint for the purpose of getting the share in the family property. The allegations levelled by her on the petition of complaint does not suggest any offence within the meaning Section 498A of the IPC.

18. The allegation of keeping the ornaments and other personal belongings of the complainant by Petitioner No. 1 has also no leg to stand because the trial Court itself did not take any cognizance under Section 406 of the IPC.

19. For the reasons stated above, I do not have any other alternative but to quash the criminal proceeding arising out of Complaint Case No. 2790 (C) of 2016 against the present petitioners.

20. The instant writ petition thus allowed on contest.

21. There shall, however, be no order as to costs.

(Bibek Chaudhuri, J)

uttam/-skm

AFR/NAFR	NAFR
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