

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.11997 of 2023

Arising Out of PS. Case No.-2 Year-2018 Thana- MAHILA PS District- Darbhanga

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1. SUKMIN DEVI @ SUKMANI DEVI W/O SURENDRA DAS Resident of Village- Bhiwarpur, P.O.- Madhurapur, P.S.- Bidupur, District- Vaishali.
 2. SURENDRA DAS S/O LATE GULAM RAM Resident of Village- Bhiwarpur, P.O.- Madhurapur, P.S.- Bidupur, District- Vaishali.

... .. Petitioner/s

Versus

1. The State of Bihar
2. ASHOK KUMAR RAM S/O LATE SAHDEV RAM Resident of Village- Khajasarai, P.S.- Laheriyasarai, District- Darbhanga.

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Binod Kumar, Advocate

For the Opposite Party/s : Mr. Raj Ballabh Singh, APP

Mr. Pankaj Kumar Das, Advocate

CORAM: HONOURABLE MR. JUSTICE PARTHA SARTHY
ORAL ORDER

5 14-05-2024 1. The petitioners have filed the instant application for quashing the order dated 15.7.2022 passed in C.R. no. 584 of 2019 (Miscellaneous Case no. 121 of 2019) whereby the learned Sub-Divisional Judicial Magistrate, Darbhanga was pleased to hold that there was sufficient material to proceed and a *prima facie* case was made out under sections 498A and 34 of the Indian Penal Code and section 4 of the Dowry Prohibition Act.

2. The FIR being Mahila P.S Case no. 2 of 2018 was registered under sections 498A, 323 and 34 of the Indian Penal Code and sections 3 and 4 of the Dowry Prohibition Act by the opposite party no.2 making allegations of torture, assault as also physical and mental cruelty against the accused persons



including the two petitioners herein. It is stated by learned counsel for the petitioners that chargesheet no. 13 of the 2018 was submitted on 6.3.2018 only against the husband of the daughter of the informant and cognizance was also taken only against him by order dated 16.9.2018. It is submitted that the informant preferred Criminal Revision no. 374 of 2018 before the learned District Judge which was allowed vide order dated 7.2.2019 whereby the learned Court below was directed to proceed on the basis of protest petition which was available on record. Thereafter, the protest petition was treated to be a complaint and the complainant as also other witnesses in support of the complaint were examined in course of inquiry, the depositions of the witnesses having been brought on record as Annexure-6 series to the petition. Based on the material available on the protest petition/complaint and the statement of the witnesses examined in support of the complaint, by the order impugned dated 15.7.2022 cognizance was taken under sections 498A and 34 of the Indian Penal Code and section 4 of the Dowry Prohibition Act.

3. Learned counsel for the petitioners submits that the allegations are general and omnibus in nature. The alleged victim ie the daughter of the informant did not come forward to



lodge an FIR or the protest petition. It is submitted that an attempt was made for settlement between the parties, however it was only for differences in the quantum that the settlement failed. It is further submitted that a suit was filed by the son of the petitioners herein on 25.11.2017 for restitution of conjugal rights wherein notice was issued on 29.11.2017. It is only in retaliation that the instant FIR was got registered on 3.1.2018. Learned counsel refers to the statement made in paragraph no. 5 of the petition which is to the effect that the daughter of the informant had made a statement before the police that her father had got the case registered as a retaliation to the suit for restitution of conjugal rights. So far as the petitioners are concerned, they are the father-in-law and mother-in-law of the daughter of the informant and the allegations against them are general and omnibus in nature. It is submitted that no case under section 498A or 34 of the Indian Penal Code nor under section 4 of the Dowry Prohibition Act is made out against the petitioners.

4. The application is opposed by learned counsel appearing for the opposite party no.2. It is submitted that from reading of the protest cum complaint petition as also statement of the witnesses examined in course of inquiry, it would transpire that there is specific allegation of assault, torture and



cruelty levelled against the two petitioners herein. None of the submissions made on behalf of the petitioners entitles quashing of the order taking cognizance. The order impugned taking cognizance not being illegal in any manner, the petitioners have not made out any case for interference by this Court. There being no merit in the instant application, the same be rejected.

5. Having heard learned counsel for the parties and having perused the material on record, it transpires that an FIR being Mahila P.S Case no. 2 of 2018 was registered on 3.1.2018 under sections 498A, 323 and 34 of the Indian Penal Code and sections 3 and 4 of the Dowry Prohibition Act. Chargesheet no. 13 of 2018 was submitted on 6.3.2018 only against Chandu Kumar while the others including the petitioners herein were not sent up for trial. The protest cum complaint petition was filed by the informant on 14.6.2018, which was treated to be a complaint and in course of inquiry the statement of the witnesses were recorded. Statement of the complainant as also the witness Bhola Ram, Ganga Ram, Ram Dayal Choudhary, Kumari Puja and Asha Devi were recorded in support of the complaint. Having gone through the contents of the protest cum complaint petition together with the statements of the witnesses recorded in course of inquiry, the learned Sub-Divisional Judicial



Magistrate, Darbhanga by his order dated 15.7.2022 impugned herein was pleased to take cognizance under sections 498A and 34 of the Indian Penal Code and section 4 of the Dowry Prohibition Act.

6. On perusal of the contents of the protest cum complaint petition, this Court finds that there is specific allegation against the two petitioners herein of having made demand of dowry to the tune of Rs. 11,00,000/- in cash and a four wheeler car. It has further been stated that soon after the marriage, the accused persons including the petitioners herein started to torture the daughter of the opposite party no.2 both physically and mentally, she was assaulted, they stopped giving her food and threatened that she would not be permitted to settle down until the demands were met. Threats were also given that her husband would marry a second time. The allegations of physical and mental torture, in course of inquiry was not only supported by the wife of the opposite party no.2 ie the mother of the victim but also the victim herself and three other witnesses.

7. Having perused the contents of the protest cum complaint petition, the statement of the complainant as also the other witnesses on solemn affirmation, this Court is satisfied that a *prima facie* case under section 498A and 34 of the Indian



Penal Code as also section 3 of the Dowry Prohibition Act is made out against the petitioners. The Court finds no illegality in the order taking cognizance dated 15.7.2022 passed by the learned Sub-Divisional Judicial Magistrate, Darbhanga in CR no. 584 of 2019 and no merit in the instant application.

8. The application is dismissed.

(Partha Sarthy, J)

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