

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.16822 of 2023

Arising Out of PS. Case No.-1233 Year-2018 Thana- COMPLAINT CASE District- Banka

1. PRABHA DEVI W/o Nawal Kishore Mandal R/o Village- Parariya, P.S.- Banka, Distt- Banka.
2. Prafull Kumar Mandal S/o Nawal Kishore Mandal R/o Village- Parariya, P.S.- Banka, Distt- Banka.

... .. Petitioners

Versus

1. The State of Bihar
2. Pinki Devi D/o Kamdeo Mandal R/o Village- Neel Kothi, P.S.- Chanan, Distt- Banka.

... .. Opposite Party/s

Appearance :

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

For the Opposite Party/s : Mr.Nand Kishore Prasad, Addl Public Prosecutor

CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR SINGH
ORAL ORDER

6 15-04-2024 Quashing petition of petitioner no.2 is dismissed as withdrawn.

2. Heard learned counsel for the petitioner no.1 and the State. Nobody appears for opposite party no.2 inspite of valid service of notice.

3. This application has been filed for quashing order dated 22.2.2019 passed in Complaint Case No. C 1238/2018, whereby and whereunder cognizance has been taken for alleged offence under sections 323, 379, 498 (A), 504, 506, 307/34 of the I.P.C. as well as sections 3 & 4 of the Dowry Prohibition Act.

4. As per the prosecution case, opposite party no.2 was married with the petitioner no. 2 on 03.06.2013 in accordance with Hindu culture. At the time of marriage, her father had given gift and other articles of Rs. 2,00,000/-. It is further stated that till one and a half year, their conjugal life



remained happy, but after that with conspiracy of whole family, accused persons including the petitioners demand Rs. 1 Lakh as dowry and one Hero motorcycle, failing which, the complainant will not allow to live in her laws place. When the complainant told them that her father is unable to pay the same, upon which her husband abused her and given personal comment and they stopped providing her food. It is further alleged that the accused persons also tried burn her but any how she saved her life.

5. While denying the allegations, learned counsel for the petitioners submits that the petitioner no. 1 is mother-in-law of opposite party no.2 and petitioner no.2 is husband of opposite party no.2. From perusal of the complaint, it is evident that occurrence took place on 25.07.2018, but the complaint case instituted on 20.08.2018 after delay of 26 days and there is no explanation for the same. However, petitioner no.2 is still ready to keep his wife/ opposite party no.2 in matrimonial house with security and dignity, if she withdraws the cases lodged by her in Banka Civil Court at the behest of her father who is practicing lawyer in the said court. That apart, allegation of torture and harassment is general and omnibus and no specific overt act has been alleged against her. As a matter of fact, husband of opposite party no.2 is labour working as Raj Mistri, whereas father of opposite party no.2 is a practicing advocate in Civil Court, Banka and at his instance opposite party no.2 has lodged this false in order to grab property of the petitioner. It is next submitted that merely on the basis of general and omnibus allegation, the petitioner has been made an accused in this case and continuation of proceedings against her would amount to abuse of the process of the court. In this connection, learned counsel for the petitioner has placed reliance upon judgment of



the Hon'ble Apex court passed in the case of **Preeti Gupta & Anr. Versus State of Jharkhand & Anr. reported in (2010) 7 SCC 667.**

6. On the other hand, learned A.P.P. for the State has opposed the arguments advanced on behalf of the petitioner and submits that petitioner is mother in law of opposite party no.2 and is named in the FIR. She is instrumental in torturing opposite party no. 2, both mentally and physically. From perusal of the FIR it reflects that there is sufficient material on record against the petitioner and it cannot be said that prima facie no case is made out against this petitioner. Hence, no interference is required by this court at this stage.

7. Having heard submissions advanced by learned counsel appearing on behalf of the parties and perusing the materials available on record, this Court is of the opinion that merely by making general allegations that the petitioner was involved in physical and mental torture of the informant/opposite party no. 2, continuation of proceedings against these petitioners would amount to abuse of the process of the court..

8. Therefore, upon consideration of the relevant circumstances, and in light of the law laid down by the Hon'ble Apex Court in the cases of **Preeti Gupta (supra) and Kahkashan Kausar alias Sonam and others versus State of Bihar and Others** reported in (2022) 6 SCC 599, and in absence of any specific role attributed to petitioner no.1, it would be unjust if this petitioner is forced to go through the tribulations of a trial.

9. In view of the foregoing discussions, order of cognizance dated 22.2.2019 passed in Complaint Case No. C



1238/2018, is hereby quashed with respect to the petitioner no.1.
10. Accordingly, the present quashing application is
allowed.

(Prabhat Kumar Singh, J)

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