

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.26166 of 2021

Arising Out of PS. Case No.-2644 Year-2014 Thana- BHOJPUR COMPLAINT CASE
District- Bhojpur

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Ajay Anand S/O Vijay Anand R/O Village-249 Bhatthi Gali, Bihari Mill, P.S.-
Ara Nawada, District-Bhojpur.

... .. Petitioner/s

Versus

1. The State Of Bihar
2. Ranju Devi, wife of Abhay Anand, resident of Vill-Power Ganj, Bihari Mill, P.S. Ara Nawada, District-Bhojpur

... .. Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Manoj Kumar
For the Opposite Party/s : Mr. A.G.

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CORAM: HONOURABLE MR. JUSTICE HARISH KUMAR
ORAL JUDGMENT

Date : 23-08-2024

Heard Mr. Manoj Kumar, learned Advocate for the petitioner and learned Additional Public Prosecutor for the State.

2. It is to be noted that despite valid service of notice upon the opposite party no. 2, no one appears on her behalf.

3. The petitioner by invoking the inherent jurisdiction of this Court under Section 482 of the Cr.P.C. seeking quashing of the order dated 14.01.2020 passed by the learned A.D.J.- 3rd, Bhojpur at Ara in Cr. Rev. No. 178 of 2018 arising out of Complaint Case No. 2644 of 2014 whereby the learned court has rejected the revision petition filed on behalf of the petitioner after being found no infirmity in the order dated 21.08.2015



passed by the learned Judicial Magistrate 1st Class, Bhojpur at Ara summoning the accused persons to face trial after taking cognizance of the offences punishable under Sections 498A, 494, 379/34 of the Indian Penal Code.

4. Shorn of unnecessary details, the relevant facts for adjudication of the matter are that the marriage of the complainant was solemnised with Abhay Anand on 13.03.2008 as per Hindu rites and rituals. Soon after the marriage, the complainant was subjected to demand of dowry at the hands of all the accused persons and on account of non-fulfillment of the same, she was tortured and assaulted by various means and finally she was ousted from her matrimonial home. It is also alleged that the complainant has blessed with two girl child and despite that her husband subsequently solemnised his marriage with Sujita Devi, daughter of Jagdish Pandit. On 30.01.2013, the complainant was ousted from her matrimonial house after taking her signature on blank paper. With the aforementioned allegation, the complaint case bearing Complaint Case No. 2644 of 2014 was filed.

5. The solemn affirmation of the complainant was recorded. The statement of the complainant's witnesses, namely, Suresh Chandra Singh, Mukesh Kumar and Manju Devi were



also recorded and on being found, *prima facie*, materials constituting offence under Section 498A, 494, 379/34 of the Indian Penal Code summons were issued to the petitioner along with other accused persons. The order taking cognizance, summoning the accused persons was put to challenge by the petitioner in Criminal Revision No. 178 of 2018, however, the same came to be dismissed vide order dated 14.01.2020 which is questioned before this Court by filing the present application.

6. Adverting to the aforesaid facts, learned Advocate for the petitioner contended that the petitioner is none else but the brother-in-law of the complainant who has been serving as a Constable in Air Force and at present he is working as a Constable, Air Force Station, Kanheri Hills. The certificate in this regard has been issued by the Wing Officer, Air Force Station, Kanheri Hills, copy of which has been brought on record by filing the supplementary affidavit.

7. Prior to the institution of the present complaint, the complainant had instituted an FIR bearing Mahila P.S. Case No. 16 of 2013 on 25.02.2013 with exactly identical allegation under Sections 498A/34 of the Indian Penal Code and Sections 3/4 of the Dowry Prohibition Act. The allegation set forth in the FIR was investigated and final form has been submitted vide



Final Report No. 11 of 2013 dated 31.003.2013 wherein the petitioner and two others have not been sent up for trial, copy of the final report has been placed on record as Annexure-2(i).

8. Learned Advocate for the petitioner drew the attention of this Court to the averments made in the complaint petition as well as the solemn affirmation of the complainant and vigorously contended that the solemn affirmation clearly suggests that the entire allegation revolves around the husband and there is no whisper with regard to the involvement of the petitioner in the present crime. Learned Advocate for the petitioner has taken to this Court to the impugned order passed in Criminal Revision No. 178 of 2018 and urged before this Court that the learned Revisional Court has taken note of this fact that the petitioner happens to be brother-in-law and he has been serving in Air Force despite that he did not find any merit in the submission of the petitioner. The learned Revisional Court while rejecting the revision petition has observed that the offence of cruelty or torture on account of non-fulfillment of demand is a continuing offence and irrespective of the fact that in the earlier case the petitioner has not been sent up for trial along with other accused persons but there is no bar in institution of the second case. The finding in the order of the



learned Revisional Court is said to be wholly unjustified, illegal and not in accordance with the law; is the contention of the learned Advocate for the petitioner.

9. *Per contra*, learned Advocate for the State countering the submissions of the petitioner contended that the learned Revisional Court has rightly observed that the offence of cruelty and torture on account of non-fulfillment of demand is a continuance offence and irrespective of the fact that at any point of time the involvement of a person has not been found; but subsequent thereto if any case has been instituted against the said person and the Court finds material available on record constituting the offence, it has rightly issued summons against the person to face the trial. Law is well settled that at the time of issuance of summons in a complaint case the learned Magistrate is not required to consider the defence version or materials nor he is required to evaluate the merit of the materials or evidence whether it would lead to conviction or not.

10. This Court has given anxious consideration to the submissions advanced on behalf of the petitioner as well as the State and also perused the materials on record. This Court has also gone through the complaint case as well as the solemn affirmation of the complainant. Barring the omnibus allegation



that all the in-laws persons indulged in demanding dowry and torture, there is no allegation showing any act specifically attributed to the petitioner. The complaint petition also shows that in the name of the accused column, the name of the petitioner has been arrayed later on with a different pen. The solemn affirmation also reveals that the entire allegation revolves around the husband of the complainant. Now this Court feels it apposite to consider some of the verdicts of the Apex Court wherein the Hon'ble Court imposed certain duties on the Courts to be careful and cautious in dealing with the complaints where exaggerated version of the incidents are reflected and tendency to rope up all the family members in order to settle the score exist. The Hon'ble Supreme Court in the case of ***Preeti Gupta & Anr vs State Of Jharkhand & Anr., (2010) 7 SCC 667*** has observed that majority of the complaints are filed either on the advice of the lawyer or with his concurrence. The learned members of the bar who belong to a noble profession must maintain its noble traditions and should treat every complaint under section 498A as a basic human problem and must make serious endeavour to help the parties in arriving at an amicable resolution of that human problem. Unfortunately, at the time of filing of the complaint, the implications and consequences are



not properly visualized by the complainant that such complaint can lead to insurmountable harassment, agony and pain to the complainant, accused and his close relations. Hon'ble Court also found that the allegations of harassment of husband's close relations who had been living in different cities and never visited or rarely visited the place where the complainant resided would have an entirely different complexion. Such allegations of the complaint are required to be scrutinized with great care and circumspection.

11. Recently the Apex Court in the case of ***Kahkashan Kausar @ Sonam vs The State Of Bihar*** reported in ***(2022) 6 SCC 599*** considering the fact that in case of insufficiency of specific and distinct allegation against the accused whether the quashment sought by the aggrieved person is warranted. In the aforesaid case, earlier a complaint was filed containing allegation of demand of dowry in the year 2017 against the husband and in-laws' persons and the learned Trial Court finding no prima facie case against the in-laws' persons summoned only husband but the dispute at that time was resolved and the complainant-wife came back to her matrimonial home. In the year 2019, another complaint was filed alleging therein that all the accused used to pressurize the



complainant-wife to fulfill the demand of dowry and threaten to forcibly terminate her pregnancy, if the demands were not made. The matter was brought to the High Court, however, orders summoning the accused person did not interfere with and finally the accused person approached before the Apex Court. The Hon'ble Supreme Court taking note of the fact that incorporation of Section 498A of the Indian Penal Code was aimed at preventing cruelty committed upon a woman by her husband and her in-laws, by facilitating rapid state intervention. However, it is equally true, that in recent times, matrimonial litigation in the country has also increased significantly and there is a greater disaffection and friction surrounding the institution of marriage which resulted into an increased tendency to employ provisions such as 498A of the IPC as instruments to settle personal scores against the husband and his relatives. In the decisions of *Rajesh Sharma & Ors. v State of U.P. & Anr.*, *Arnesh Kumar v The State of Bihar & Anr.*, *Preeti Gupta & Anr. v The State of Jharkhand & Anr.*, *Geeta Mehrotra & Anr. v State of U.P. & Anr.* and *K. Subba Rao v. The State of Telangana*, while allowing the appeal and quashing the FIR against the appellants, the Apex Court in *Kahkashan Kausar @ Sonam (supra)* held in paragraph nos. 17



and 20 as follows:

“17. The abovementioned decisions clearly demonstrate that this Court has at numerous instances expressed concern over the misuse of Section 498-AIPC 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.

20. Here it must be borne in mind that although the two FIRs may constitute two independent instances, based on separate transactions, the present complaint fails to establish specific allegations against the in-laws of the respondent wife. Allowing prosecution in the absence of clear allegations against the appellant in-laws would simply result in an abuse of the process of law.”

12. It would be worthy to observe that at the stage of order taking cognizance or summoning of an accused person in a complaint case, the Judicial Magistrate is only required to look into the materials as to whether *prima facie* case is constituted or not but at the same time the learned Magistrate ought to



consider there must be some allegation or role attributed against the person, when a complaint is arising out of a matrimonial relationship or family dispute, as there is every chance of roping up all the family members of the family in order to put pressure upon the husband.

13. In the light of the mandate of the Apex Court, this Court finds that in absence of specific allegation against the petitioner who happens to be brother-in-law of the complainant and has been serving in Air Force since long continuation of the prosecution would be an abuse of the process of the court. True it is that the High Court in exercise of its jurisdiction under Section 482 of the Cr.P.C., must make a just and rightful choice and at the stage of cognizance of summoning of an accused person, the truthfulness or otherwise of the allegations levelled by the prosecution/complainant against the accused is not required to be looked into. However, it is also true that where the prosecution of the complainant has levelled allegation only with an oblique motive to rope up the accused person in order to settle the score. The Court would be justified in preventing injustice by invoking the inherent powers. It would be an abuse of the process of the court to allow any action which would result in injustice and prevent promotion of justice.



14. In the aforesaid circumstances, this Court finds merit in the quashing application and accordingly the order dated 14.01.2020 passed by the learned A.D.J.-3rd in Criminal Revision No. 178 of 2018 as well as the order dated 21.08.2015 passed by the learned Judicial Magistrate 1st Class, Bhojpur at Ara arising out of Complaint Case No. 2644 of 2014 stands quashed.

15. The quashing application stands allowed.

(Harish Kumar, J)

Anjani/-

AFR/NAFR	
CAV DATE	
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