

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.22747 of 2019

Arising Out of PS. Case No.-48 Year-2013 Thana- KHAJEKALA District- Patna

=====

Amar Nath Dubey @ Prem Shankar Dubey Son Of Jagdish Dubey Resident Of Nai Sarak Nabab Bahadur Road, P.S.- Khajekala, Distt - Patna. At Present R/O Ward No. 12, Rambhadra, Hajipur, P.S.- Hajipur Town, Distt - Vaishali.

... .. Petitioner/s

Versus

1. The State Of Bihar
2. Nibha Ranjan Wife Of Ravi Shankar Dubey @ Guddu @ Arjun Resident Of Nai Sarak, Nabab Bahadur Road, P.S.- Khajekala, Distt - Patna.

... .. Opposite Party/s

=====

Appearance :

For the Petitioner/s : Mr. Binod Murari Mishra

For the Opposite Party/s : Mr. Akbar Ali

=====

CORAM: HONOURABLE MR. JUSTICE SUNIL KUMAR PANWAR
ORAL JUDGMENT

Date : 04-07-2024

The present application has been preferred for quashing the order dated 14.08.2018 passed in Khajekala P.S. No. 48 of 2013 (G.R. No. 586 of 2013) by learned Sub Divisional Judicial Magistrate, Patna City whereby cognizance for the offence punishable under Section 498(A), 323/34 of Indian Penal Code and Section 3/4 of the Dowry Prohibition Act has been taken against the petitioner.

2. As per the allegation in the FIR, the informant/victim married one Ravi Shankar Dubey on



18.12.2012 and after marriage, she went to her *Sasural* but after some days, all the accused persons started demanding Rs. One lakh for business of her husband and on the refusal by the informant/victim, all the accused persons tortured her. It is further alleged that due to torture, she went to her parents' house where she gave birth to a baby child but even after the birth of the baby, no one came to see her. It is also alleged that when on 05.03.2013, she went to her sasural to bring her books then her mother-in-law, husband and brother-in-law abused and assaulted her.

3. Learned counsel appearing on behalf of the petitioner submitted that the petitioner is innocent and has committed no offence and has been implicated wrongly and falsely in this case. There is no specific allegation against the petitioner. The allegation levelled against him is general and omnibus in nature. In fact, the mother-in-law of O.P. No. 2 was the wife of the petitioner but petitioner filed divorce petition against the



mother-in-law of O.P. No. 2 on 11.03.1987 in which the said suit was decreed ex-parte against the mother-in-law of opposite party No. 2 on 22.06.1990. She filed first appeal which was also dismissed. Thereafter, against the order of first appeal, mother-in-law of O.P. No. 2 preferred L.P.A. which was dismissed on 12.12.2006. It is further submitted that after the divorce as stated above the petitioner has performed 2nd marriage and from the said wedlock there are sons and daughters of the petitioner and he is residing with his second wife and children. He has no concern either with O.P. No. 2 or his children since long. Prior to year 1987, the mother-in-law of the opposite party No. 2 has deserted the petitioner and thereafter she never came back with the petitioner. Hence, there is no question to demand and torture by the petitioner to O.P. No. 2 in any manner. These facts clearly shows that with mala fide intention the O.P. No. 2 has not disclosed all the said facts before the learned trial Court, as a result of which impugned



order has been passed against the petitioner which is illegal and against the facts and circumstances of the case. On the other hand, he is paying maintenance to the mother-in-law of O.P. No. 2 as per the order of learned family Court. Petitioner has got no knowledge about the marriage of O.P No. 2 since the husband of O.P. No. 2 is also residing with his mother prior to the filing of divorce case attaining the age of majority the petitioner was paying maintenance to the husband of O.P. No. 2. The dispute, if any, between O.P No. 2 and her in-laws, the petitioner is not at all concerned with their affairs. The petitioner is separate from the O.P. No. 2 and her husband. It is further submitted that the present case is an absolute misuse and abuse of due process of law and he has been dragged unnecessarily in this case.

4. In contra, learned A.P.P. duly assisted by learned counsel appearing on behalf of O.P. No. 2 while opposing the prayer of application submitted that



petitioner has actively participated in the occurrence and as such a prima-facie case is made out against him.

5. Before dealing with the merit of present quashing application, it is necessary to consider the nature and scope of the inherited power of the High Court under Section 482 of Cr.P.C. The said Section saves the inherent power of the High Court to make fresh orders as measures necessary in three different situations.

(a) to give effect to an order under this Court.

(b) to prevent abuse of the process of the Court.

(c) to otherwise secure the ends of justice.

6. In case of **Dhruvaram Murlidhar Sonar vs. State of Maharashtra**, reported in **2019 (18) SCC 191** in its paragraph no. 13, it has been held that for quashing the proceedings, meticulous analysis of factum of taking cognizance of an offence by Magistrate not called for. Appreciation of evidence is also not



permissible in exercise of inherent powers. If the allegations set out in the complaint does not constitute the offence of which cognizance has been taken. It is open to the High Court to quash the same in the exercise of inherent powers.

7. Hon'ble Apex Court in the case of ***Preeti Gupta & another vs. State of Jharkhand & another***, reported in **(2010) 7 SCC 667** has been pleased to rule that there should be a clear allegation against the relatives of the husband and vague & omnibus allegation would not be sufficient to compel them to undergo agony of the trial.

8. Hon'ble Apex Court in the case of ***Arnesh Kumar vs. State of Bihar and Another*** reported in **(2014) 8 SCC 273** has been pleased to observe that there is a phenomenal increase in matrimonial disputes in recent years. The institution of marriage is greatly revered in this country. Section 498(A) I.P.C. was introduced with an avowed object to combat the menace



of harassment to a woman at the hands of her husband and his relatives. The fact that Section 498(A) I.P.C. is a cognizable and non-bailable offence has lent it a dubious place of pride amongst the provisions that are used as weapons rather than shield by disgruntled wives. This simplest way to harass is to get the husband and his relatives arrested under this provision. In a quite number of cases, bedridden grandfathers and grandmothers of the husbands, their sisters living abroad for decades are arrested. In the said case, the Supreme Court has cautioned the courts with regard to proceeding against in-laws and distant relatives of the husband of the wife involved in the offence under Section 498(A) of the I.P.C. and other relevant offences.

9. After considering the aforesaid factual and legal discussions, I am of this view that the present case is misuse and abuse of due process of law. The petitioner, having no concern with O.P. No. 2 or her family, has been dragged unnecessarily in this case the petitioner



has no concern with the mess and business of the opposite party No. 2 and facing general and omnibus allegation. The petitioner is not concerned at all with the affairs of O.P. No. 2 and her in-laws. The petitioner is separate from her.

10. Accordingly, this Cr. Misc. application is allowed and the cognizance order dated 14.08.2018, passed in Kajekala P.S. Case No. 48 of 2013 (G.R. No. 586 of 2013) by Sub Divisional Judicial Magistrate, Patna City is quashed and set aside with regard to this petitioner.

(Sunil Kumar Panwar, J)

Nirajkrs/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	09.07.2024
Transmission Date	09.07.2024

