

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.438 of 2019

Arising Out of PS. Case No.-19 Year-2013 Thana- MAHILA THANA District- Begusarai

1. NAWRAJ KUMAR Son of Ram Chandra Prasad Singh Resident of Village - Rajendrapuri Speaker Chak, P.S.- Kaji Mohammadpur, Distt.- Muzaffarpur.
2. Ram Chandra Prasad Singh Son of Sri Damodar Prasad Singh Resident of Village - Rajendrapuri Speaker Chak, P.S.- Kaji Mohammadpur, Distt.- Muzaffarpur.
3. Uma Devi W/o Ram Chandra Prasad Singh Resident of Village - Rajendrapuri Speaker Chak, P.S.- Kaji Mohammadpur, Distt.- Muzaffarpur.

... .. Petitioner/s

Versus

1. The State of Bihar
2. Swarnim D/o Dr. Raghvendra Prasad Singh Resident of Village - Mohalla Station Road Gachhi Tola, P.S.- Town, Distt.- Begusarai.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Ajay Kumar Thakur, Adv., Ms. Vaishnavi Singh, Adv.
For the Respondent/s	:	Mr. Binod Kumar, APP

CORAM: HONOURABLE MR. JUSTICE BIBEK CHAUDHURI

ORAL JUDGMENT

Date : 29-01-2024

Heard learned Advocate for the petitioners as well as learned APP for the State.

2. The accused persons of G.R. Case No. 1190 of 2014, arising out of Mahila P.S. Case No. 19 of 2013, are the petitioners before this Court challenging legality, validity and propriety of the order dated 18th January, 2019.

3. By passing the impugned order, the petition filed on behalf of the petitioners praying for their discharge under Section



239 of the Cr.P.C. is assailed before this Court. For proper appreciation of the dispute the following factual circumstances are required to be stated:-

(I) The opposite party no. 2 lodged a written complaint to the Officer-in-charge of Mahila Police Station, Begusarai, stating, inter alia, that her marriage was solemnized with accused Nawraj Kumar on 24th June, 2012 according to Hindu rites and ceremony. After few days of marriage the petitioners being the husband, father-in-law and mother-in-law started mental torture upon the opposite party no. 2 on demand of a Flat in Delhi and a four wheeler. The Defacto complainant narrated entire story to her father, but her father shown his inability to fulfill the demand. On 30th June, 2012, the brothers of the defacto complainant came to the matrimonial home of the defacto complainant to participate in the reception of the marriage of the defacto complainant with the petitioner no.1. In the said reception itself, the husband of the defacto complaint made his demand and also assaulted the brothers of the defacto complainant. The defacto complainant was then compelled to leave her matrimonial home and took shelter at her paternal home. The brothers of the defacto complainant again went to settle the dispute between the parties to the house of the accused no.1., but he was again assaulted. He lodged a complaint,



on the basis of which Navkothi P.S. Case No. 14 of 2013 was registered. Subsequently, the complainant lodged a complaint, on the basis of which Mahila P.S. Case No. 19 of 2013, under sections 498A/34 of the I.P.C. read with Sections 3 and 4 of the Dowry Prohibition Act was registered.

4. It is submitted by the learned Advocate for the petitioners that on 8th March, 2013, the petitioner no. 1 lodged a complaint in the jurisdictional Police Station against the brothers of the defacto complainant, on the basis the said complaint Kazi Mohammadpur P.S. Case No. 100 of 2013, dated 8th March, 2013, under Sections 341/323/448/379/504/506/34 of the I.P.C. was registered. In the said case Police submitted charge-sheet against the brothers of the defacto complainant.

5. On the other hand, the complaint filed by the brothers of the defacto complainant ended in filing Final Report by the trial court.

6. It is submitted by the learned Advocate for the petitioners that if the F.I.R. filed by the defacto complainant is considered by the court below, a *prima facie* case under Section 498A/34 of the I.P.C. may be held to be substantiated. But, if the entire factual circumstances are taken into consideration, it would appear that the opposite party no. 2/defacto complainant stay in the



house of the petitioners only five few days. Subsequently, the petitioner no. 1 filed a suit for restitution of conjugal rights. However, the opposite party no. 2 filed a suit for divorce. Subsequently, she has filed a complaint, on the basis of which Mahila P.S. Case No. 19 of 2013 was registered.

7. If the surrounding circumstances are taken into consideration, it will obviously proved that further proceeding under Section 498A of the I.P.C., against the petitioners will be abuse of the process of the Court.

8. Having heard the learned Advocate for the petitioners and on careful perusal of the entire materials on record, this Court states that Section 239 of the Cr.P.C. lays down the circumstances when accused shall be discharged.

9. Section 239 of the Cr.P.C. runs thus:-

“239. If, upon considering the police report and the documents sent with it under section 173 and making such examination, if any, of the accused as the Magistrate thinks necessary and after giving the prosecution and the accused an opportunity of being heard, the Magistrate considers the charge against the accused to be groundless, he shall discharge the accused, and record his reasons for so doing.”



10. Therefore, at the stage of Section 239 of the Cr.P.C., it is the duty of the learned Magistrate to consider the Police report and the documents sent with it under Section 173 of the Cr.P.C. and making such examination, if any, of the accused as the Magistrate thinks necessary and after giving opportunity to the prosecution and the accused of being heard, he may discharge the accused. At the stage of consideration of materials, i.e. Police report and the documents under Section 173 of the Cr.P.C., the learned Magistrate is required to consider as to whether the charge against the accused is groundless or not.

11. The defacto complainant in his petition of complaint stated that she left her matrimonial home within few days of her marriage because her father could not fulfill the demands of the petitioners. The Investigating Officer collected materials in support of the complaint made by the defacto complainant. Pendency of other criminal cases does not suggest, *prima facie*, that the charge under Section 498A/34 of the I.P.C. and Sections 3/4 of the Dowry Prohibition Act is groundless.

12. On the other hand, pendency of the criminal cases between the parties shown that the parties are at logger heads.

13. Considering such aspect of the matter, I do not find any merit in the instant revision. The ground that the continuation



of proceeding under Section 498A of the I.P.C. will be abuse of the process of the Court cannot be said to be a ground to discharge the petitioners. Only where the learned Magistrate consider the charge to be groundless, the accused persons can be discharged. The learned Magistrate is well within his jurisdiction to hold that there is sufficient material to frame charge against the accused persons.

14. In view of the above discussion, I do not find any merit in the instant revision and accordingly, the instant revision is dismissed.

(Bibek Chaudhuri, J)

pravinkumar/-

AFR/NAFR	
CAV DATE	
Uploading Date	
Transmission Date	

