

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.39547 of 2023

Arising Out of PS. Case No.-91 Year-2020 Thana- ROHTAS COMPLAINT CASE District-
Rohtas

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VIMAL KUMAR VISHWAKARMA Son of Late Ganga Vishnu Vishwakarma Resident of House No. 328/9, GCF Estate, Vidya Nathan Nagar, Gokulpur, P.S.-Jabalpur, District-Jabalpur, Madhya Pradesh, Pin-482011

... .. Petitioner/s

Versus

1. The State of Bihar
2. ANU SHARMA ALIAS KUMARI ANURADHA Daughter of Shri Bhagwan Sharma Resident of Choudhari Mohhala, Trigun Dehri, P.S.-Dehri, District-Rohtas, Pin-821305

... .. Opposite Party/s

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Appearance :

For the Petitioner/s	:	Mr. Sanjay Singh, Sr. Advocate Mr. Raushan, Advocate Mr. Sahil Kumar, Advocate Mr. Rudrank Shivam Singh, Advocate
For the State	:	Mr. Aditya Narayan Singh.1, APP
For the Opposite Party no.2 :		Mr. Puneet Siddhartha, Advocate

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CORAM: HONOURABLE MR. JUSTICE PARTHA SARTHY
ORAL ORDER

8 07-05-2024 1. Heard learned Senior counsel for the petitioner, learned APP for the State of Bihar and learned counsel for the opposite party no.2.

2. The petitioner has filed the instant application praying for quashing the order dated 3.1.2022 passed in Complaint Case no.91 of 2020 whereby the learned Judicial Magistrate 1st Class, Dehri-on-sone, Rohtas was pleased to take cognizance for the offence under section 498A of the Indian Penal Code against the petitioner.



3. A complaint was filed by the opposite party no.2 on 8.6.2020 in the Court of learned Sub Divisional Judicial Magistrate, Dehri, Rohtas stating therein that the opposite party no.2 was married to the petitioner as per Hindu rites and customs on 27.6.2018. Various gifts including Rs.3 lacs in cash, gifts articles worth Rs.3 lacs and ornaments worth Rs.2.5 lacs was given at the time of marriage to the accused persons besides spending a sum of Rs.2,75,000/ for the reception ceremony. The opposite party no.2 resided in Jabalpur till 29.6.2018 and thereafter came with her brother to her parents place at Dehri-on-sone. It is stated that the petitioner came to the parents place of the opposite party no.2 and demanded a sum of Rs.5 lacs from her parents for setting up his household in Haryana and stated that he would not take the opposite party no.2 till the said amount is given. As such, Rs.5 lacs was obtained by the parents of the opposite party no.2 on loan and given to the petitioner. It is further stated that soon after the opposite party no.2 going to her sasural, the accused persons started to physically and mentally torture her. Her mother-in-law, the petitioner as also his elder brother used to make objectionable comments and also used to demand a pulsar motorcycle, gold bangles etc. She was threatened that she would be thrown out of the house and



buried alive. At times, she was abused, assaulted and tortured. Taking the benefit of being maltreated by the petitioner, the other accused persons used to make objectionable comments and demands from her. As a result of the torture meted out to her, the opposite party no.2 lodged a case no.423 of 2019 on 11.12.2019 in the Court of the learned Sub Divisional Judicial Magistrate, Dehri, Rohtas. She was abused and threatened that either she should fulfill the demands or else she would be divorced. On the opposite party no.2 reaching Jabalpur on 23.2.2020, she learnt that the petitioner was posted as an Assistant Professor in the University. On the opposite party no.2 returning from Jabalpur, she narrated about the occurrences to her parents. Taking into account the social consideration, various attempts were made to settle the matter amicably, however, inspite of waiting for considerable time, no positive reply was received. After having been tortured both physically and mentally and having been ousted, the opposite party no.2 states that she has been living with her parents in the district of Rohtas. She prays that appropriate direction be issued to register an F.I.R. under section 156(3) and to properly investigate the matter so that cognizance is taken against the accused persons.

4. Learned Senior counsel appearing for the petitioner



submits that the petitioner, who happens to be the husband of opposite party no.2, has been falsely implicated in the case. It is submitted that it was the petitioner who filed an application for divorce under section 13 of the Hindu Marriage Act, 1955 against the opposite party no.2 at Jabalpur on 24.2.2020 which led to the opposite party no.2 filing a complaint petition against him on 8.6.2020. The allegations against the petitioner are false and concocted. On an application having been filed by the opposite party no.2, by an order dated 6.2.2023, passed in Transfer Petition (Civil) no.1003 of 2020 (Anu Sharma vs. Dr. Vimal Kumar Vishwakarma), the Hon'ble Supreme Court has been pleased to transfer Case no.237 of 2020 pending in the Court of the Principal Judge, Family Court, Jabalpur, Madhya Pradesh to the Presiding Judge at Dehri-on-sone, District Rohtas, Bihar. It is thus submitted that pursuant to the direction of the Hon'ble Supreme Court, the divorce case having been transferred to Bihar, the parties already having submitted to the civil jurisdiction under divorce, there is no reason as to why the instant criminal proceeding be continued. The contents of the petition of complaint under section 498A of the Indian Penal Code is based on a make believe story and is an abuse of the process of the Court. Referring to the contents of the



supplementary affidavit filed on behalf of the petitioner, learned Senior counsel submits that the material brought on record would show that the relationship between the parties was not as has been made out to be in the complaint petition. In fact, the petitioner himself was taking Health Insurance policy for the opposite party no.2. In the facts and circumstances of the case, learned Senior counsel submits that the instant case having been registered subsequent to filing of the divorce case by the petitioner, no offence under section 498A of the Indian Penal Code is made out and the order impugned dated 3.1.2022 taking cognizance is not sustainable and fit to be set aside.

5. The application is opposed by learned counsel appearing for the opposite party no.2. Referring to the contents of the complaint petition as also to the counter affidavit filed on behalf of the opposite party no.2, it is submitted by learned counsel that there is direct and substantial material against the petitioner of not only demand of dowry but physical and mental torture carried out by him along with others against the opposite party no.2. It is submitted that the complainant in her statement on solemn affirmation as also the witnesses namely Bhagwan Sharma and Shashi Bhushan have supported the contents of the complaint petition. Prima facie case is made out against the



petitioner under section 498A of the Indian Penal Code. There being no merit in the instant application, the same be dismissed.

6. Having heard learned counsel for the parties and having perused the contents of the petition, this Court finds that the complainant-opposite party no.2 filed a complaint on 8.6.2020 against the petitioner who happens to be her husband and other members of his family in the Court of learned Sub Divisional Judicial Magistrate, Dehri, Rohtas under section 498A of the Indian Penal Code and sections 3 and 4 of the Dowry Prohibition Act. On perusal of the contents of the complaint petition as also the statement of the complainant on solemn affirmation, it transpires that there is direct allegation against the petitioner who happens to be the husband of the complainant along with others of having physically and mentally tortured the complainant, of having assaulted her and having forced her out of the house. Though, it is correct that the instant complaint which was filed on 8.6.2020 was preceded by a divorce case filed by the petitioner on 24.2.2020, however, even prior to the same, the opposite party no.2 had filed a case alleging domestic violence on 11.12.2019 which was registered as Complaint Case no.423 of 2019 against the petitioner and the same is pending in the Court of learned Sub Divisional Judicial



Magistrate, Dehri-on-sone, Rohtas.

7. So far as the other points raised by learned Senior counsel appearing for the petitioner is concerned, the same may be said to be the defence of the petitioner which may be raised by the petitioner at an appropriate stage.

8. Having heard learned counsel for the parties and having perused the contents of the petition, the Court finds that there is sufficient material on record to hold that prima facie case under section 498A of the Indian Penal Code is made out against the petitioner. The Court finds no merit in the instant application filed by the petitioner.

9. The application is dismissed.

(Partha Sarthy, J)

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