

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.35745 of 2023

Arising Out of PS. Case No.-123 Year-2021 Thana- SULTANGANJ District- Patna

1. MD. IRSHAD Son of Late Md. Rafiullah Resident of Kasmandikala, PS- Malihabad, District- Lucknow
2. Rehana @ Rehana Khatoon Wife of Md. Irsad Resident of Kasmandikala, PS- Malihabad, District- Lucknow
3. Md. Akbar Son of Md. Idris Resident of Mohalla- Noon Ka Chauraha, PS- Khajekalan, District- Patna
4. Shama Praveen Wife of Md. Akbar Resident of Mohalla- Noon Ka Chauraha, PS- Khajekalan, District- Patna
5. Rafi Ahmad @ Md. Rafi Ahmad @ Raju son of Sabi Ahmad Resident of Village- Lodi Katra, Atta Chakki, PS- Khajekalan, District- Patna
6. Asama Khatoon Wife of Rafi Ahmad @ Md. Rafi Ahmad @ Raju Resident of Village- Lodi Katra, Atta Chakki, PS- Khajekalan, District- Patna
7. Shamima Khatoon Wife of Md. Idrish Resident of Mohalla- Noon ka Chauraha, PS- Khajekalan, District- Patna
8. Reshama Khatoon Wife of Md. Moin Resident of Mohalla- Gulsan Haidari, PS- Khajekalan, District- Patna

... .. Petitioner/s

Versus

1. The State of Bihar
2. Tabassum Praveen Wife of Md. Asraf Resident of Mohalla- Noon ka Chauraha, Gulshan Haidari, PS- Khajekalan, District- Patna, present address Daughter of Md. Javed, resident of Mohalla- Dargah Road Chauraha, PS- Sultanganj, PO- Mahendru, District- Patna

... .. Opposite Party/s

Appearance :

For the Petitioner/s :	Mr. Pramod Kumar, Advocate
For the Opposite Party/s :	Mr. Sanjay Kumar Tiwary, APP
	Md. Shahid Akhtar, Advocate

CORAM: HONOURABLE MR. JUSTICE PARTHA SARTHY
CAV JUDGMENT

Date : 09-08-2024

1. Heard learned counsel for the petitioners, learned
APP for the State and learned counsel for the opposite party
no.2.

2. The petitioners have filed the instant application



praying for quashing the order dated 21.1.2023 passed in Sultanganj P.S Case no. 123 of 2021 whereby the learned Sub-Divisional Judicial Magistrate, Patna City was pleased to take cognizance for the offence under sections 498A, 341, 323, 34 and 504 of the Indian Penal Code and sections 3 and 4 of the Dowry Prohibition Act.

3. The prosecution case, as per the written statement of the informant-opposite party no.2 dated 22.5.2021 addressed to the Officer-Incharge of the Sultanganj Police Station is that she was married to Md. Asraf on 30.11.2019. After going to her *sasural*, she was treated well for 25 days but thereafter her husband started making demand of Rs. 3 lacs by way of dowry and her mother-in-law started to abuse and assault her. The informant further states that her *nanad* (husband's sister), Asama Khatoon and Reshama Khatoon used to taunt her that nothing was given in dowry. She was described as a beggar and on protest by the informant, she was beaten up. The informant states that her *bhaisur* (husband's elder brother) got hold of her hair and threw her to the ground saying that she should be burnt alive. Her *gotni* (husband's brother's wife) Shama Praveen assaulted her with kicks and fists. All the accused threatened that she would be permitted to stay in the house only when she



got Rs. 3 lacs from her parents which according to the informant's mother-in-law was required for her son to start business. The informant states that she returned to her father's place on 28.2.2020. She was pregnant and has been residing at her father's place. The informant states that the accused persons keep abusing her on the telephone and as such the instant case.

4. On the basis of the written statement of the informant, Sultanganj P.S. Case no. 123 of 2021 was registered on 22.5.2021 for the offence under sections 498A, 341, 323, 34 and 504 of the Indian Penal Code and sections 3 and 4 of the Dowry Prohibition Act.

5. After investigation of the case, charge-sheet having been submitted, cognizance was taken by the learned trial Court by order dated 21.1.2023 which has been challenged by the petitioners in the instant application.

6. Learned counsel for the petitioners submitted that the petitioners are innocent and have not committed any offence. They have been falsely implicated in the case because of enmity, grudge and dirty village and family politics. No such occurrence as alleged in the FIR has taken place and for the same cause of action, the informant also lodged a Complaint Case no. 529 of 2020 for the offence registered under sections



498A and 34 of the Indian Penal Code and sections 3 and 4 of the Dowry Prohibition Act. A copy of the same has been brought on record as Annexure-2 to the petition. The informant having filed two cases for the same alleged offence, the instant case is an abuse of the process of the Court. The petitioners are the relatives of the husband of the informant and never made any demand of dowry etc nor ever tortured the informant, as incorrectly alleged in the FIR. It is thus prayed that the instant application be allowed and the order taking cognizance be quashed.

7. The application is opposed by learned APP for the State and learned counsel for the opposite party no.2. Learned counsel for the opposite party no.2 referring to the counter affidavit filed on behalf of the opposite party no.2 submits that the witnesses have supported the allegations against the petitioners which led to filing of the charge-sheet and cognizance has been rightly taken against them. There is no merit in the instant application and the same be dismissed.

8. Having heard learned counsel for the parties and having perused the material on record including the contents of the police case diary, it transpires that the petitioners are named in the FIR and there is direct allegation against them of having



abused, assaulted as also physically and mentally tortured the informant. The witnesses whose statements have been recorded in paragraph nos. 6, 7 and 8 of the case diary and who happen to be the father, mother and brother of the informant as also an independent witness whose statement has been recorded in paragraph no. 50 of the case diary have all supported the prosecution case against the petitioners herein. The Court finds that there is sufficient material against the petitioners to proceed against them and the learned trial Court rightly took cognizance in the case under sections 498A, 341, 323, 504 and 34 of the Indian Penal Code and sections 3 and 4 of the Dowry Prohibition Act.

9. So far as contention of learned counsel for the petitioner that for the same offence, besides the instant FIR (Annexure-1) the informant also filed a complaint case on earlier occasion is concerned, on perusal of the petition of complaint (Annexure-2) it transpires that while the complaint was filed on 30.9.2020 for an occurrence which took place between 30.11.2019 and 26.2.2020, the FIR from which the instant application arises was registered on 22.5.2021 for an occurrence said to have taken place on 3.4.2021. Thus the Court finds no merit in the contention raised by learned counsel for the



petitioner.

10. The Court finds no merit in the instant application
and no illegality in the order impugned.

11. The application is dismissed.

(Partha Sarthy, J)

Shiv/-

AFR/NAFR	NAFR
CAV DATE	27.06.2024
Uploading Date	09.08.2024
Transmission Date	09.08.2024

