

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.37472 of 2023

Arising Out of PS. Case No.-674 Year-2017 Thana- MADHUBANI COMPLAINT CASE
District- Madhubani

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1. MD. ASHFAANE @ MD. ASFHAK Son of Late Md. Murtuza
 2. Md. Yanus Son of Late Md. Murtuza
 3. Md. Mustaque Son of Late Md. Murtuza
 4. Md. Kalam @ Md. Arman Son of Late Md. Murtuza
 5. Most. Raushan Khatoon Wife of Late Md. Murtuza
All resident of village - Pandaul, P.S. - Pandaul, Distt. - Madhubani

... .. Petitioner/s

Versus

1. The State of Bihar
2. Nargish Khatoon Wife of Md. Mumtaz Resident of village - Pandaul, P.S. - Pandaul, Distt. - Madhubani. At present D/o Md. Tara Muddin Resident of village- Khutauna, P.S. - Khutauna, Distt. - Madhubani

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Ravi Prakash, Advocate

For the Opposite Party/s : Dr. Mrityunjaya Kr.Gautam, APP

CORAM: HONOURABLE MR. JUSTICE PARTHA SARTHY
ORAL ORDER

8 06-05-2024 1. Heard learned counsel for the petitioners and
learned counsel for the opposite parties.

2. The petitioners by way of this application have
prayed for quashing the order dated 6.4.2019 passed in
connection with C.R. Case no.674 of 2017 (T.R. no.976 of
2022) whereby the learned Sub Divisional Judicial Magistrate,
Jhanjharpur was pleased to hold that a prima facie case under
sections 323, 341, 498A, 379 and 504 of the Indian Penal Code



and section 4 of the Dowry Prohibition Act is made out against the petitioners.

3. As per the allegations in the complaint, the complainant/opposite party no.2 states that she was married as per muslim rites and customs to Md. Mumtaz in the year 2008. They started living as husband and wife in her sasural which consists of joint family including all the accused named in the complaint. As her husband used to live outside to earn his livelihood, she was maltreated by the accused persons. She has three daughters aged about 8 years, 5 years and 1 year. In the absence of her husband, the complainant states that the accused persons started making a demand that the complainant should get Rs.1 lakh in cash and a buffalo from her parents and on the complainant's refusal, she was mentally tortured. The complainant wished to commit suicide. It is further stated that the accused persons assaulted her and various gifts which the complainant had received from her parents, total value of which was Rs.2 lacs, was taken away by the accused persons. She was forced out the house. On the parents of the complainant giving information about the occurrence to her husband, it is stated that her husband came to the village. A panchayati was held on 18.11.2017 where also the accused persons made a demand of



Rs.1 lakh and threatened and abused the complainant that till the amount was paid she would not be permitted to reside in the house. In support of the complaint, the complainant as also the witnesses Md. Tara Muddin, Md. Kalim and Md. Mustafa were examined. By order dated 6.4.2019, impugned herein, the learned trial Court was pleased to take cognizance against the petitioners under sections 498A, 379 and 504 of the Indian Penal Code and section 4 of the Dowry Prohibition Act.

4. It is submitted by learned counsel appearing for the petitioners that the petitioners have been falsely implicated in the case. No occurrence in the manner alleged has ever taken place and the entire prosecution version has been concocted and fabricated. The petitioners have no concern with the complainant or her affairs. The marriage having taken place in the year 2008, there is a delay of seven years from the time of the first occurrence as alleged by the complainant in the complaint petition. In support of his contention, learned counsel for the petitioner has placed reliance on the judgment of this Court dated 11.3.2024 passed in Cr. Misc. no.17690 of 2023.

5. The application is opposed by learned APP for the State. It is submitted that not only the petitioners are named in the complaint but there is direct allegation against them of



torturing the complainant as also making demand of dowry. It is further submitted that the offence under section 498A of the Indian Penal Code is a continuing offence and there is no illegality in the order taking cognizance.

6. Having heard learned counsel for the parties and having perused the contents of the complaint petition, this Court is of the opinion that the allegations against the petitioners cannot be said to be general and omnibus in nature and thus there would be no applicability of the judgment relied upon by learned counsel for the petitioners.

7. Further, the Hon'ble Supreme Court in various cases has held that the High Court has no jurisdiction to examine the correctness of the complaint, the contents of which has to be seen in its entirety. Reference may be made to the case of *Pratibha Rani vs. Suraj Kumar & Anr.*, (1985) 2 SCC 370 and in the case of *M/s Medchl Chemicals & Pharma P. Ltd. vs. M/s Biological E. Ltd. & Ors.* 2000 (3) PLJR 56 (SC).

8. It is to be taken note of that section 498A of the Indian Penal Code is a continuing offence and there is direct allegation against the petitioners of torturing the complainant in absence of her husband and also having taken away various gift articles etc. worth Rs.2 lacs.



9. In view of the facts and circumstances of the case,
the Court finds no merit in the instant application and the same
is dismissed.

(Partha Sarthy, J)

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