

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.44756 of 2023

Arising Out of PS. Case No.-58 Year-2022 Thana- MAHILA P.S. District- Nalanda

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AMRITA KUMARI WIFE OF CHANDAN KUMAR R/O HOUSE NO. 422,
MOHALLA- BHAIASUR, PO- BIHARSHARIF, PS- LAHERI, DISTRICT-
NALANDA, AND PERMANENT RESIDENT OF VILLAGE -
HALIMPURE CHAKMAN SINGH, P.S. - NAYA RAM NAGAR
(SAFIYABAD), DISTRICT- NALANDA

... .. PETITIONER/S

VERSUS

1. THE STATE OF BIHAR
2. KUNDAN KUMAR SON OF SURESH PRASAD RESIDENT OF
VILLAGE- HALIMPUR CHAKMAN SINGH, PO- JAMALPUR, PS-
NAYA RAM NAGAR (SAFIYABAD), DISTRICT- MUNGER

... .. OPPOSITE PARTY/S

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Appearance :

For the Petitioner/s : Mr. Prakritita Sharma, Advocate

For the Opposite Party/s : Mr. Ajay Kumar No. 2 , APP

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CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR SINGH
ORAL ORDER

5 01-04-2024 Heard learned counsel for the parties.

2. This application has been filed for the following:-

(i) For quashing the order dated 06.07.2022 passed
by Learned Sub Divisional Judicial Magistrate, Biharsharif,
Nalanda in connection with Cri. Case No.-115/2022 arising out
of Mahila P.S. Case No.-58/2022, to the extent by which while



taking cognizance of the offence under section 498 (A), 341 323, 506/34 of the Indian Penal Code and under section 3/4 of the Dowry Prohibition Act, against the other co-accused persons, namely-Chandan Kumar (Husband), Nirmala Devi (Mother-in-law) and Kalicharan Prasad (elder brother-in law), the learned Sub Divisional Judicial Magistrate by accepting the final form has dropped the proceeding against co- accused Kundan Kumar (Younger brother-in-law i.e.-Devar), without providing opportunity of hearing to the informant contrary to settled principal of law.

(ii). For quashing the order dated 09.05.2023 passed by learned Sessions Judge, Nalanda, Bihar Sharif passed in Criminal Revision No.-151/2022 whereby and whereunder the learned Judge has been pleased to reject the revision petition preferred by the petitioner (informant) by upholding the order of cognizance dated 06.07.2022 passed by learned Sub Divisional Judicial Magistrate, Bihar Sharif, Nalanda in connection with Cri. Case No.-115/2022 arising out of Mahila P.S. Case No.-58/2022.

3- The prosecution story, in brief, is that the petitioner solemnized marriage with Chandan Kumar on April 26, 2021, as per Hindu customs and rituals. The entire expenses of the



marriage were borne by her father. After three months of the engagement ceremony, the co-accused, *Kalicharan*, demanded Rs. 8,00,000 (8 lakhs) to purchase a duplex in Delhi. The father of the petitioner had transferred Rs. 5,00,000/- (5 lakhs) in A/C No. 20165893382 of S.B.I. and Rs. 3,00,000/- in A/C No. 6405000100036432. Both the account numbers were provided by the husband of the petitioner, namely Chandan Kumar and his brother Kalicharan. After marriage, the petitioner went to her sasural at Village Halimpur, where, after 2 to 3 days, her in-laws started torturing her. Her husband told the petitioner that her father had received Rs. 1 crore after retirement, and as such, her mother-in-law Nirmala Devi, Bhaisur Kalicharan Prasad, husband Chandan Kumar, and Dewar Kundan Kumar started pressuring her to demand Rs. 20,00,000 (Twenty Lacs) from her father. When the petitioner refused to do so, she was subjected to mental and physical cruelty by all the accused. The petitioner was not being provided food properly, and as such, she became very weak. It is further stated that on June 13, 2021, her husband left for Delhi, leaving the petitioner at her matrimonial home (sasural), in spite of the fact that she was unwell due to torture and assault. On June 16, 2021, the petitioner was seriously ill, and she made a call to her husband, who did not



receive her call or call her back. In the evening, the mother-in-law of the petitioner called unknown persons to give injections to the petitioner in the name of medical treatment, but the petitioner smelled foul play and denied the same. Later, the petitioner called her father, who came and took her to Biharshariff, where she was properly treated by Dr. Abhay Kumar. In the month of September, the petitioner went to Delhi, but her husband denied keeping her with him, so she went to the residence of her brother in Delhi and lived there for 2 and a half months. After much effort, in the month of November 2021, her husband agreed to keep her, and then she started to live with him. But on January 14, 2022, her husband left her alone without informing her and left for his home, and again she started leaving with her brother. On February 10, 2022, her husband returned to Delhi, and then she again started leaving with him but was subject to regular cruelty in spite of being pregnant. The petitioner was not provided food properly, and her husband always insisted on the termination of her pregnancy. On March 22, 2022, her husband again left for his home, leaving the petitioner all alone in Delhi, and when she asked him not to go, he kicked her in the stomach. The husband of the petitioner, under the influence of the co-accused, denied to keep



her without receiving the amount of Rs. 20,00,000 (Twenty Lacs). Having no option, the petitioner filed an application to the Hon'ble Chief Minister, Bihar, Patna, which was sent to Mahila P.S. Bihar Sharif, where counseling was held on May 4, 2022, and May 15, 2022, but all went in vain, and then the present case was registered against the accused persons, Mahila P.S. Case No. 58/2022 U/s 498(A), 341, 323 registered under Section 506/34 of the Indian Penal Code and Section 3/4 of the Dowry Prohibition Act.

4. It is submitted on behalf of the petitioner that the petitioner was not aware of the fact that the police had completed investigation, and without informing her about the status of the investigation, the police submitted the above mentioned charge sheet very mechanically, ignoring the fact that, very categorically, the accusation was made against the family members of her husband who were indulged in the torture being given to the petitioner in her matrimonial home. It is next submitted that after receipt of Charge Sheet and perusing the material available on record, the learned Sub Divisional Judicial Magistrate without issuing notice to the informant of the case , who was required to be heard at the time of submitting charge sheet by which one of the accused was



exonerated from the charges, accepted the contents of the charge sheet and took cognizance of the offence only against three accused persons under section 498 (A), 341 323, 506/34 of the Indian Penal Code and under section 3/4 of the Dowry Prohibition Act, namely *Chandan Kumar* (Husband), *Nirmala Devi* (Mother-in-law), *Kalicharan Prasad* (elder brother-in law) and dropped the proceeding against *Kundan Kumar* (O.P. No.-2) vide an order dated 06.07.2022, without appreciating the fact that the similar allegations were made against all the four persons, but the police did not submit charge sheet against Opposite Party No.-2 who equally and actively participated in the crime along with others and the police had material to proceed against him as well which came during the course of investigation and which is also bad in law and is fit to be quashed. In this connection, learned counsel for the petitioner has placed reliance upon judgment of the Hon'ble Apex court passed in the case of the Apex Court in the case of ***Bhagwant Singh v. Commissioner of Police*** reported in ***(1985) 2 SCC 537***.

5 . On the other hand, learned counsel for the Opposite party No. 2 has vehemently opposed the submission made on behalf of the petitioner and submits that learned Court



below has rightly passed the order and, as such, no interference is required by this court at this stage and the present petition is fit to be dismissed.

6. Having heard the submissions advanced by learned counsel appearing on behalf of the parties and on perusing the materials available on record, it appears that while dropping the proceeding against the opposite party No. 2, learned trial court has not issued notice to the petitioner nor any opportunity of hearing was given to the informant. It is settled law that before attributing the proceeding, the trial court was required to hear both parties.

7. Therefore, upon consideration of the relevant circumstances and in light of the law laid down by the Hon'ble Apex Court in the case of ***Bhagwant Singh v. Commissioner of Police*** reported in ***(1985) 2 SCC 537***, wherein it is held that the person lodging F.I.R., is entitled to hearing, on the basis of the police report and the Magistrate prefers to drop the proceedings instead of taking cognizance of the offence .

8. In view of the foregoing discussions, order dated July 6, 2022, passed by the Learned Sub Divisional Judicial Magistrate, Biharsharif, Nalanda, in connection with Cri. Case No. 115/2022 arising out of Mahila P.S. Case No. 58/2022, with



respect to the petitioner, is hereby quashed.

9. This application is accordingly allowed.

(Prabhat Kumar Singh, J)

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