

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.45342 of 2023

Arising Out of PS. Case No.-688 Year-2020 Thana- PATNA COMPLAINT CASE District-
Patna

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1. MOHD. SAMIR @ CHHOTU @ MD. SAMEERUDDIN son of Md. Shamimuddin Village- Amin Colony Lodi Katra Ps- Khajekalan Po- Jhauganj Dist- patna
 2. Rukhsaar Khatoon @ Rukhsar Fatima wife of Md. Shamimuddin Village- Amin Colony Lodi Katra Ps- Khajekalan Po- Jhauganj Dist- patna
- Petitioner/s

Versus

1. The State of Bihar
 2. Shajya Naj wife of Md. Nadeem, D/o- Shamshad Ali Village- Amin Colony Lodi Katra Ps- Khajekalan Po- Jhauganj Dist- patna P/A- Dargah Road Pather ki masjid PS- Sultanganj Ps- Mahendru Dist- Patna
- Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Md. Azimuddin, Advocate
For the Opposite Party/s : Mr. Satyendra Prasad, APP

CORAM: HONOURABLE MR. JUSTICE PARTHA SARTHY

C.A.V JUDGMENT

Date : 08-07-2024

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 9.3.2021 passed in CA no.688 of 2020 by the learned Judicial Magistrate 1st Class, Patna City whereby cognizance was taken under sections 323, 498A and 34 of the Indian Penal Code and section 4 of the



Dowry Prohibition Act.

3. As per the prosecution case the opposite party no.2-complainant states that she was married to Md. Nadeem as per Muslim rites and customs on 27.3.2018. Gifts were given by her father beyond his capacity and a large amount was spent in the ceremonies. Dowry as described in the complaint along with Rs.3 lakhs in cash and Rs.2 lakhs by RTGS was also given. The opposite party no.2 states that the accused persons including the two petitioners herein started making demand of Rs.5 lakhs and an Alto car. It is on their instigation that the husband of the opposite party no.2 used to make these demands. She further states that a daughter was born to her on 4.2.2020. Thereafter the demands continued. The accused started torturing her on the death of the daughter stating that if the marriage had taken place elsewhere her husband would have been given much valuable gifts. Aspersions were cast on the character of the opposite party no.2. As a result of the physical and mental torture inflicted, the opposite party no.2 started to contemplate committing suicide. An attempt was made to burn her intentionally by creating gas leak, however on *hulla* being raised by the opposite party no.2, she was saved by the neighbours. In spite of attempts by the opposite party no.2, the case was not registered in the police



station and as such the complaint.

4. On the complaint filed by the opposite party no.2, Complaint Case no.688(c) of 2020 was registered in the Court of the learned Additional Chief Judicial Magistrate, Patna City, District Patna. In course of enquiry the statement of the complainant as also two other witnesses were recorded. By order dated 9.3.2021 passed in C.A. no.688 of 2020 the learned trial Court was pleased to take cognizance in the case. It is against this order that the instant application has been preferred.

5. Learned counsel for the petitioners submits that all the members of the family of the husband of the opposite party no.2 have been made accused. The allegations are general and omnibus in nature with no specific allegation against any person. It is submitted that the order taking cognizance so far as coaccused Shabana Khatoon and Md. Shamimuddin are concerned, the same has been quashed by order dated 23.4.2024 passed in Cr.Misc. no.60593 of 2023. The two petitioners herein happen to be the son and daughter-in-law of Md. Shamimuddin. It is further submitted that on 29.2.2020 the petitioner who happens to be the brother-in-law (devar) of the opposite party no.2 was not in the country. Reliance is placed on behalf of the petitioner on the judgment of the Hon'ble Supreme



Court in the case of *Preeti Gupta & Anr. vs. State of Jharkhand & Anr [(2010)7SCC667]* and *Kahkashan Kausar @ Sonam vs The State of Bihar [(2022)6SCC599]* to submit that there being no specific allegations against the petitioners, the order taking cognizance against them also be quashed.

6. The application is opposed by learned APP for the State and learned counsel for the opposite party no.2. It is submitted by learned counsel for the opposite party no.2 that not only the petitioners are named in the complaint petition but the allegations against them have been supported by the complainant as also other witnesses in course of enquiry. The case cited on behalf of the petitioners are of no assistance to the petitioners. There-being no merit in the instant application, the same be dismissed.

7. Having heard learned counsel for the parties and having perused the materials on record, this Court finds that the petitioners happen to be the *devar* (husband's younger brother) and *devarani* (wife of husband's younger brother) of the complainant. On perusal of the petition of complaint and the statement of the witnesses recorded on S.A., the Court finds that not only the allegations against the petitioners are general and omnibus in nature but are at most similar to the allegations



levelled by the complainant against her father-in-law and mother-in-law. As submitted above, the case of the mother-in-law and father-in-law of the complainant has already been allowed by this Court and the order taking cognizance as against them quashed by order dated 23.4.2024 in Cr. Misc. no.60593 of 2023. Relevant portion of the order dated 23.4.2024 is extracted hereinbelow for ready reference:

“3. Petitioner No. 1 is the mother-in-law and petitioner No. 2 is the father-in-law of opposite party No. 2.

4. While denying the allegations, learned counsel for the petitioners contended that even if the entire facts mentioned in the complaint is taken into consideration in its entirety, then prima facie no case is made out against the petitioners under sections 498 (A) of Indian Penal Code. Therefore, to prevent the abuse of process of law, the entire proceeding including the order of cognizance may be quashed. It is further contended that the prosecution story as per complaint is doubtful and on the basis of omnibus and vague allegation these petitioners have falsely been implicated in this case. He lastly submits whenever any dispute arises in between husband and wife the entire family members are implicated in a mechanical manner with general and omnibus allegations. As such, continuation of proceedings against these petitioners would amount to abuse of the process of the court. In this connection, learned counsel for the petitioners has placed reliance upon



*judgment of the Hon'ble Apex court passed in the case of **Preeti Gupta & Anr. Versus State of Jharkhand & Anr.** reported in (2010) 7 SCC 667.*

5. On the other hand, learned A.P.P. for the State and learned counsel appearing on behalf of the opposite party no. 2 have opposed the arguments advanced on behalf of the petitioners and submits that petitioners are named in the complaint and they were instrumental in torturing the opposite Party No. 2, both mentally and physically. There is sufficient material on record against them and it cannot be said that prima facie no case is made out against these petitioners. Hence, no interference is required by this court at this stage.

6. Having heard the submissions advanced by learned counsel appearing on behalf of the parties and on perusing the materials available on record, and the complaint, it appears that only omnibus allegations have been made by opposite party no.2.

7. Therefore, upon consideration of the relevant circumstances, and in light of the law laid down by the Hon'ble Apex Court in the cases of Preeti Gupta & Anr. Versus State of Jharkhand & Anr. reported in (2010) 7 SCC 667 and Kahkashan Kausar alias Sonam and others versus State of Bihar and Others reported in (2022) 6 SCC 599, and in absence of any specific role attributed to the petitioners, it would be unjust if the petitioners are forced to go through the tribulations of a trial.

8. In view of the foregoing discussions, order dated 09.03.2021 passed by ld. Sub Divisional Judicial Magistrate, Patna City in connection with



CA No. 688 of 2020, whereby and where under Cognizance of the offence punishable under sections 323, 498 A of I. P. C and section 4 of the D. P Act, with respect to these petitioners only, is hereby quashed.

9. This application is accordingly allowed.”

8. In view of the facts and circumstances of the case, the case of the petitioners being similar to that of the petitioners of Cr. Misc. no.60593 of 2023 which has been allowed by order dated 23.4.2024, this application is also fit to be allowed.

9. The order dated 9.3.2021 passed in C.A. no. 688 of 2020 by the learned Judicial Magistrate 1st Class, Patna City taking cognizance in the case under sections 323, 498A and 34 of the Indian Penal Code and section 4 of the Dowry Prohibition Act, is hereby quashed.

10. The application is allowed.

(Partha Sarthy, J)

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AFR/NAFR	
CAV DATE	
Uploading Date	9.7.2024
Transmission Date	

