

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.54560 of 2023

Arising Out of PS. Case No.-1788 Year-2022 Thana- EAST CHAMPARAN COMPLAINT
District- East Champaran

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Wasim Akram, aged about 39 years, Male, S/o Md. Ataullah R/o N.H. 41
Cross road no-1, block no. 2, R.F Tower, Shashtri Nagar, P.S- Kadma, Distt.-
Jamshedpur, Jharkhand.

... .. Petitioner/s

Versus

1. The State of Bihar
2. Anjum Ara, aged about 36 years, Female, D/o Murtza Hassan, W/o Wasim Akram R/O Mohalla- Mathiya Zirat, P.S- Chhatauni, Distt.- East Champaran.

... .. Opposite Party/s

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Appearance :

For the Petitioner/s	:	Mr. Rajesh Ranjan, Advocate Md. Waliur Rahman, Advocate
For the State	:	Mr.Jharkhandi Upadhyay, APP
For the opposite party no .2	:	Mr. Sangeet Deokuliar, Advocate

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CORAM: HONOURABLE MR. JUSTICE SANDEEP KUMAR
ORAL ORDER

6 20-08-2024 Heard learned counsel for the petitioner; learned APP
for the State and learned counsel for the opposite party no. 2.

2. The present application has been filed for quashing
the order dated 08.12.2022 passed in Complaint Case No.1788
of 2022 by which the learned S.D.J.M, Sadar Motihari has taken
cognizance for offence under sections 406/504/498A/323 read
with Section 34 of the Indian Penal Code and has issued



summon against the accused persons.

3. As per the prosecution case, the complainant Anjum Ara was married to the petitioner Wasim Akram on 06.06.2015 and at the time of marriage, the parents of the complainant had gifted goods and articles worth about Rs. 15 lakhs. Thereafter, the complainant was residing in Jamshedpur, Jharkhand along with her husband and her in-laws. It is alleged that after marriage, the accused persons started to make remarks against the inferior quality of the goods/gifts which was given at the time of the marriage and furthermore the complainant was tortured and abused on petty issues. It is alleged that the petitioner had suppressed the fact that the petitioner was already married to another woman and further that the petitioner was in a habit of establishing extramarital relations with other women. It is further alleged that whenever the complainant objected, the complainant was subjected to cruelty and assault.

4. The complainant gave birth to her son on 23.03.2016 and subsequently it is alleged that the accused persons started pressurizing the complainant to purchase a flat in Jamshedpur.

5. It is further alleged that the complainant caught the petitioner with another girl. However, upon her objection, the



complainant was assaulted and therefore the complainant left her matrimonial home and came to reside with her parents. It is also submitted that a 'panchyati' was convened however since the petitioner was unwilling, the 'panchyati' eventually failed. The complainant was thus constrained to file the complaint bearing C-1788/2022 on 20/07/2022 in Motihari. Thereafter the learned Sub-Divisional Judicial Magistrate, Motihari after examination of the complaint took cognizance under Sections 406/504/498A/323 read with Section 34 of the Indian Penal Code and issued summons against the accused persons.

6. Initially, the matrimonial life of the petitioner and the complainant was going well, however after some months, the complainant became reluctant towards her husband and his family. The petitioner submits that the complainant was continuously engaged on her mobile phone talking to someone, when the petitioner enquired from the complainant, she did not disclose the identity of one person with whom she used to talk. Even after being blessed with a son, the complainant continued to be uninterested and she did not take care of her son, who was being looked after by the mother and the father of the petitioner. Thereafter, the petitioner submits that the complainant was pressurizing him to live separately but the petitioner was not



ready to do so.

7. Learned counsel for the petitioner submits that the complainant herself is responsible for the strained relation and she does not perform duty of wedded wife even after the entire family tried to make her understand the sanctity of marriage. She left house and she did not return back then the petitioner filed a case for restitution of conjugal rights bearing Matrimonial Case No. 662 of 2021 on 25.11.2021 at Jamshedpur.

8. Learned counsel submits that the opposite party no. 2 having come to know about the aforesaid case filed Divorce Suit No. 328 of 2022 before the Principal Judge, Motihari making frivolous allegations in the petition. The Court below has mechanically taken cognizance against the petitioner and has issued summons against him to face trial.

9. It has further been submitted by learned counsel for the petitioner that the order for summoning the accused persons is harassing in nature in as much as she without consent of petitioner left her infant child aged about one year left India and went China where her brother-in-law resides.

10. It has also been submitted that the petitioner has filed restitution of conjugal right in Jamshedpur. Moreover



narration of complaint is also enough to show that the occurrence took place at Jamshedpur but she has filed complaint as well as Divorce suit at Motihari only to harass the petitioner and his family.

11. Learned counsel submits that the complainant has filed present case for ulterior motive and she has deserted her husband in as much as she is reluctant to live with her husband or in-laws and black mailing the petitioner and in-laws for Rs 15 lakhs.

12. During the course of hearing, the opposite party no. 2 was directed to appear in this Court physically.

13. Learned counsel for the opposite party no. 2 had informed this Court that he was unable to contact the opposite party no. 2 and therefore he was directed to call the father of the opposite party no. 2. The father of the opposite party no. 2 has appeared today and he has admitted that the opposite party no. 2 is in China and she is to return on 28.09.2024 after completing her studies.

14. It is not in dispute that the petitioner, who is the husband of opposite party no. 2, had filed an application for Restitution of Conjugal Rights before the filing of the complaint by the opposite party no. 2. It is also not in dispute that the



opposite party no. 2 has filed a divorce case which is pending before the Principal Judge, Motihari because the opposite party no. 2 is not attending the Court as she is staying in China. When this Court asked the father of the opposite party no. 2 about the reason for continuation of the dispute, he informed this Court that initially, the girl wanted a divorce but on refusal of the petitioner, she filed a divorce case and a complaint case.

15. From the facts stated above, it is clear that it is the opposite party no. 2 who has left the matrimonial home and her one year old child to pursue her studies at China and when the petitioner filed an application for Restitution of Conjugal Rights in the year 2021, the opposite party no. 2 has filed an application for divorce and the present complaint case.

16. In my opinion, this appears to be a *mala fide* prosecution to force the petitioner to agree for divorce and this kind of *mala fide* prosecution should not be allowed to continue. Section 498A of the Indian Penal Code cannot be used as a tool for harassing the petitioner.

17. Considering the aforesaid circumstances, I am of the view that the continuance of the present criminal case against the petitioner is an abuse of the process of the Court.

18. In view of the above, this application is allowed.



19. Accordingly, the order dated 08.12.2022 passed in Complaint Case No.1788 of 2022 is hereby quashed.

20. The parties may continue with their Restitution of Conjugal Rights case filed at Jamshedpur and the divorce proceeding filed at Motihari.

(Sandeep Kumar, J)

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