

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.81703 of 2019

Arising Out of PS. Case No.-82 Year-2018 Thana- MAHILA P.S. District- Bhojpur

Gajendra Singh Son of Moulesh Kumar Singh @ Moulesh Singh Resident of
Village - Dahiyawan Tola, Tandi, P.S.- Muffasil, District- Saran

... .. Petitioner/s

Versus

1. The State of Bihar
2. Pooja Kumari D/O - Manoj Kumar Singh, Wife of Ankush Kumar Singh
Resident of Village - Maniar, P.S.- Maniyar, District- Balia, Uttar Pradesh,
Presently residing at Village - Babura, P.S.- Badhara, District- Bhojpur

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Anil Kumar, Advocate
For the Opposite Party/s : Mr. Arun Kumar Singh, APP

CORAM: HONOURABLE MR. JUSTICE SUNIL KUMAR PANWAR
ORAL JUDGMENT

Date : 04-07-2024

Heard learned counsel on behalf of the petitioner,
learned counsel for the O.P. No.2 and learned APP for the state.

2. The instance application has been preferred by the petitioner for quashing of order dated 12.12.2018, passed by the learned Sub Divisional Judicial Magistrate, Bhojpur, Ara in Trial No. 4544 of 2018 (corresponding to G.R. No. 2576/2018) arising out of Bhojpur Mahila P.S. Case No. 82 of 2018, by which cognizance of the offence punishable under sections 498(A)/379/34 of the Indian Penal Code and section 3/4 of Dowry Prohibition Act has been taken against the petitioner.

3. The prosecution case has been instituted on



the basis of written information dated 9.6.2018 of the opposite party no.2 before Mahila Police station, Bhojpur wherein, she alleged that her husband namely, Ankush Kumar Singh and his other family members, after solemnization of their marriage on 10.12.2013, have assaulted and demanded dowry of Rs. one lac and Rs. 12 lacs respectively on different occasion from the opposite party no.2 and due to non-fulfillment of dowry demand, the husband of O.P. No.2 (co-accused) has deserted her.

4. Learned counsel appearing on behalf of the petitioner submitted that the petitioner is neither the family member of the opposite party no.2 nor has any concern with the family of husband of the O.P. No.2 (co-accused) in any manner. The petitioner belongs to a different village and has nothing to do with family affairs of the husband of opposite party no.2. The petitioner had only mediator between the parties at the time of marriage and as such, after the marriage of the concerned parties, the petitioner has nothing to do with the family affairs of the parties. From perusal of prosecution case, there is not a single allegation against the present petitioner either specific or general, save and except putting the name of the petitioner in the F.I.R.



5. *In contra*, learned counsel appearing on behalf of O.P. No.2 submitted that the petitioner is only mediator between the marriage of both the parties. He is not a relative of the opposite party no.2 or her husband. He has no concern mess and business of the opposite party no.2 as well as her husband.

6. In case of ***Dhruvaram Murlidhar Sonar vs. State of Maharashtra***, reported in (2019) 18 SCC 191 in its paragraph no. 13, it has been held that for quashing the proceedings, meticulous analysis of factum of taking cognizance of any offence by Magistrate is not called for. Appreciation of evidence also not permissible in exercise of inherent powers. If the allegation set out in the complaint does not constitute the offence of which cognizance has been taken. It is open to the High Court to quash the same in the exercise of inherent powers.

7. Hon'ble Apex Court in the case of ***Preeti Gupta & another vs. State of Jharkhand & another***, reported in (2010) 7 SCC 667 has been pleased to rule that there should be clear allegation against the relatives of the husband and vague and omnibus allegation would not be sufficient to compel them to undergo agony of the trial.



8. Hon'ble Apex Court in the case of *Arnesh Kumar vs. State of Bihar and Another* reported in (2014) 8 SCC 273 has been pleased to observe that there is phenomenal increase in matrimonial disputes in recent years. The institution of marriage is greatly revered in this county. Section 498(A) of I.P.C. was introduced with avowed object to combat the menace of harassment to a woman at the hands of her husband and his relatives. The fact that Section 498(A) I.P.C. is a cognizable and non-bailable offence has lent it a dubious place of pride amongst the provisions that are used as weapons rather than shield by disgruntled wives. The simplest way to harass is to get the husband and his relatives arrested under this provision. In a quite number of cases, bedridden grandfathers and grandmothers of the husbands, their sisters living abroad for decades are arrested. In the said case, the Supreme Court has cautioned the courts with regard to proceeding against in-laws and distant relatives of the husband of the wife involved in the offence under Section 498(A) of the I.P.C. and other relevant offences.

9. In this case, the petitioner has no concern with the health and business of the O.P. No.2 and her husband. He is not a near relative, merely being a mediator at the time of



solemnization of marriage between O.P. No.2 and her husband (co-accused namely, Ankush Kumar Singh) and the allegation against the petitioner in this case is only general and omnibus. This is clear case of abuse to the process of the Court.

10. In view of the aforesaid factual and legal discussions, the petitioner is not relative of husband of O.P. No.2, facing general and omnibus allegation, therefore, this criminal miscellaneous application is allowed.

11. Accordingly, the cognizance order dated 12.12.2018 passed in Trial No. 4544 of 2018 (corresponding to G.R. No. 2576/2018) arising out of Bhojpur Mahila P.S. Case No. 82 of 2018, by the learned Sub Divisional Judicial Magistrate, Bhojpur at Ara, is hereby, quashed and set aside with regard to this petitioner.

(Sunil Kumar Panwar, J)

Amandeep/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	9.7.2024.
Transmission Date	9.7.2024.

