

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.74360 of 2019

Arising Out of PS. Case No.-3691 Year-2018 Thana- PATNA COMPLAINT CASE District-
Patna

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1. MANISH KUMAR @ MANISH RAI Son of Ram Babu Rai Resident of Kaushalya Kunj, Road No. 6D, Gardanibagh, P.S.- Gardanibagh, Distt - Patna. Bihar.
 2. Punam Devi @ Punam Rani Wife of Manish Kumar @ Manish Rai Resident of Kaushalya Kunj, Road No. 6D, Gardanibagh, P.S.- Gardanibagh, Distt - Patna. Bihar.
 3. Sanjay Kumar @ Rajan Son of Ram Babu Rai Resident of Kaushalya Kunj, Road No. 6D, Gardanibagh, P.S.- Gardanibagh, Distt - Patna. Bihar.
 4. Nitin Kumar Son of Ram Babu Rai Resident of Kaushalya Kunj, Road No. 6D, Gardanibagh, P.S.- Gardanibagh, Distt - Patna. Bihar.

... .. Petitioner/s

Versus

1. The State of Bihar
2. Supriya Shailaja, Wife of Late Rajnish Yadav, D/o Sri Shyam Nandan Resident at Mohallah - Jagat Narayan Road, Near Sir G.D. Patliputra High School, P.S.- Kadamkuan, Distt - Patna (Bihar)

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr. Sajeew Kumar Mishra, Advocate Ms. Parul Ranjan, Advocate Mr. Rakesh Kumar, Advocate
For the Opposite Party/s	:	Mr. Rajesh Ranjan, Advocate Mr. Md. Farooq, Advocate
For the State	:	Mrs. Asha Kumari, APP

CORAM: HONOURABLE MR. JUSTICE BIBEK CHAUDHURI
ORAL ORDER

5 18-09-2024 This is an application under Section 482 of the CrPC

filed by the petitioners praying for quashing of the order of

taking cognizance dated 11th October 2018 passed by the

learned Additional Chief Judicial Magistrate, IX, Patna in

Complaint Case No. 3691(C) of 2018, wherein the learned



Magistrate took cognizance of offence under Section 498A/120B/379 and 504 of the Indian Penal Code (hereinafter described as 'IPC') against the petitioners.

2. The petitioners no. 1, 3, and 4 are brother-in-laws, and petitioner no. 2 is the wife of petitioner no. 1 of the opposite party no. 2. Indisputably, the marriage of the petitioner was solemnized according to Hindu rites and customs on 01st December 2016 with one Rajnish Yadav, brother of petitioners No. 1,3 and 4, since deceased at Patna. The said Rajnish Yadav was a member of Indian Revenue Service, and at the time of his marriage, he was posted as the Joint Director, Income Tax at Lucknow. Unfortunately, in or around April 2017, the husband of the opposite party no. 2 became seriously ill. He was admitted to the ICU of Paras Hospital at Patna. Subsequently, he was shifted by air ambulance to Ganga Ram Hospital, New Delhi for better medical treatment. The doctors of the Paras Hospital as well as Ganga Ram Hospital repeatedly asked the opposite party no. 2 to supply the past medical records of her husband for proper medical treatment. The opposite party no. 2 requested time and again to produce documents relating to medical treatment of her husband to the petitioners, but they did not deliver the said documents and willfully withheld them so



that the husband of the opposite party no. 2 may not get proper medical treatment in the hospitals. Finally, the patient, i.e., the husband of the opposite party no. 2, was shifted to All India Institute of Medical Sciences, New Delhi, where he died of brain cancer on 26th July 2017.

3. The opposite party no. 2 alleged that during his lifetime, her husband purchased some flats and landed properties in different States, such as Alwar in the State of Rajasthan, Rohtak in the State of Haryana, Bhopal in the State of Madhya Pradesh, and other places in the name of the petitioner no. 1, from his own source of income. After his marriage, the husband of the opposite party no. 2 claimed those properties from the petitioner no. 1, but he, in collusion with his wife, the petitioner no. 2 herein, refused to give the necessary documents to the husband of the opposite party no. 2. The petitioners did not spend a single farthing for the medical treatment of the deceased husband of the opposite party no. 2. Even during bereavement, the petitioners tortured the opposite party no. 2 both physically and mentally. When the opposite party no. 2 claimed her husband's share in the property, the petitioners physically assaulted her, and on 10th August 2017, she was driven away from her matrimonial home. The opposite



party no. 2 filed an application under the Protection of Women from Domestic Violence Act, which was registered as DV Case No. 40/2018 before the learned Civil Judge, Senior Division, XV Court, Patna. When the opposite party no. 2 went to Delhi, where she was residing with her husband before his demise, the petitioner no. 1 and the petitioner no. 3 drove her away from the said flat. They also took away ornaments and other articles worth Rs. 30-35 lakhs from the possession of the opposite party no. 2. As a result of such persistent physical and mental torture, the opposite party 2 became physically ill and mentally frustrated.

4. The said complaint was registered as Complaint Case No. 3691(C) of 2018, and on the basis of the said complaint as well as the initial statements of the witnesses, the learned Additional Chief Judicial Magistrate, IX Court, Patna, took cognizance of the offences under Section 498(A)/120(B)/379 and 504 of the IPC.

5. The learned Advocate appearing on behalf of the petitioners submits that the petition of complaint *prima facie* does not disclose any offence under Section 498A read with Section 120(B) of the IPC. There is also no material against the petitioners to prove even *prima facie* that they had committed



theft of valuable ornaments, the laptop of the opposite party no. 2, and other documents from the flat of the deceased situated in Delhi. There is also no ingredient of offence under Section 504 of the IPC. Therefore, the order of cognizance against the petitioners is liable to be quashed. In support of his contention, he refers to a decision of the Hon'ble Supreme Court in the case of ***Preeti Gupta vs. State of Jharkhand***, reported in **(2010) 7 SCC 667**. In this decision, it was observed by the Hon'ble Supreme Court that it is a matter of common experience that most of the complaints under Section 498A of the IPC are filed in the heat of the moment over trivial issues without proper deliberations.

6. "We come across a large number of such complaints which are not even *bona fide* and are filed with an oblique motive. At the same time, the rapid increase in the number of genuine cases of dowry harassment is also a matter of serious concern."

7. It is submitted by the learned Advocate for the petitioners that the opposite party no. 2 has been harassing the petitioners by filing cases under the Protection of Women from Domestic Violence Act, under the Indian Succession Act, as well as by filing partisan suit. She is only eager to get the



properties of her deceased husband. For this reason, she has been harassing the petitioners by filing the above-mentioned complaint case, entangling them in criminal offence.

8. It is also submitted by the learned counsel for the petitioners referring to the decision of the Hon'ble Supreme Court in ***Kahkashan Kausar @ Sonam & Ors. Vs. State of Bihar & Ors. (Criminal Appeal No. 195 of 2022)*** decided on ***08th February 2022*** that the learned Magistrate did not make any preliminary inquiry under Section 202 of the CrPC before registration of the complaint case on the basis of the decision of the Hon'ble Supreme Court in ***Lalita Kumari vs. . Government of U.P. & Ors. [(2014) 2 SCC1]***. In paragraph 16 of the above-mentioned report, the Hon'ble Supreme Court referred to paragraph 21 of ***Geeta Mehrotra & Anr. vs. . State of U.P. & Anr.*** reported in ***(2012) 10 SCC 741***. In the instant case, it is apt to record the said paragraph as hereunder:

“21. It would be relevant at this stage to take note of an apt observation of this Court recorded in G.V. Rao v. L.H.V. Prasad [(2000) 3 SCC 693 : 2000 SCC (Cri) 733] wherein also in a matrimonial dispute, this Court had held that the High Court should have quashed the complaint arising out of a matrimonial dispute wherein all family members had been roped into the matrimonial litigation which was quashed and set aside. Their Lordships observed therein with which we entirely agree that: (SCC p.



698, para 12)

“12. There has been an outburst of matrimonial disputes in recent times. Marriage is a sacred ceremony, the main purpose of which is to enable the young couple to settle down in life and live peacefully. But little matrimonial skirmishes suddenly erupt which often assume serious proportions resulting in commission of heinous crimes in which elders of the family are also involved with the result that those who could have counselled and brought about rapprochement are rendered helpless on their being arrayed as accused in the criminal case. There are many other reasons which need not be mentioned here for not encouraging matrimonial litigation so that the parties may ponder over their defaults and terminate their disputes amicably by mutual agreement instead of fighting it out in a court of law where it takes years and years to conclude and in that process the parties lose their ‘young’ days in chasing their ‘cases’ in different courts.” The view taken by the Judges in that matter was that the courts would not encourage such disputes.”

9. Finally, it was held by the Hon’ble Supreme Court that when some omnibus and baseless allegation is made against the relatives of the husband of a married woman and the Court fails to ascertain the role played by each of the accused in furtherance of the offence. The erred of cognizance should not



be taken by the Court.

10. Learned Advocate appearing on behalf of the opposite party no. 2, on the other hand, suggests that the opposite party no. 2 was working in a private company in Mumbai before her marriage. It was directed by the petitioners and other family members of the husband of the opposite party no. 2 that she would have to leave her job if she wanted to marry. Considering the fact that her husband was a member of the Indian Revenue Service clearing UPSC, she agreed to leave her job to begin her marital life. Unfortunately, her husband died of brain cancer within a few months of marriage. After her marriage, the petitioners came out of their shells. They denied to give any monetary benefits of her husband to the opposite party no. 2. They physically assaulted her, and immediately after completion of the bereavement period, she was thrown out of her matrimonial home. All the petitioners were directly involved in perpetrating physical and mental cruelty; therefore, the trial court rightly took cognizance against the petitioners, and there is no reason to quash the order of cognizance, as prayed by the petitioners.

11. Section 498A of the IPC runs thus:-

“498A. Husband or relative of



husband of a woman subjecting her to cruelty.—Whoever, being the husband or the relative of the husband of a woman, subjects such woman to cruelty shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine.

Explanation—For the purposes of this section, “cruelty” means—

(a) any wilful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman; or

(b) harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand.”

12. It is needless to say that all forms of ill treatment and torture do not come within the meaning of ‘Cruelty’ as envisaged in Section 498A of the IPC.

13. In the instant case, the opposite party no. 2 has not made out any case within the meaning of explanation “(b)” of Section 498A of the IPC. However, there is a specific allegation



against the accused persons that when she demanded the share of the property of her husband, which he purchased from her own income, she was physically and mentally tortured by the petitioners. It is also contended by her that she was driven away by the petitioners from her matrimonial home immediately, after the bereavement of her husband. She was even ousted from their Delhi flat by petitioner no. 1 and petitioner no. 3. It is specifically stated by the opposite party no. 2 in her complaint that, as a result of such physical and mental torture, she suffered grave physical and mental injury.

14. It is needless to say that the wholesome power under Section 482 entitles the High Court to quash a proceeding where it comes to the conclusion that allowing the proceeding to continue would be an abuse of the process of the Court or that the ends of justice require that the proceeding ought to be quashed. The High Court has been invested with inherent powers, both in civil and criminal matters, to achieve salutary public purpose. A court proceeding ought not to be permitted to degenerate into a weapon of harassment or persecution. Ends of justice are higher than the ends of mere law, though justice must be administered according to laws made by the legislature.

15. The legal position is well settled that when a



prosecution at the initial stage is asked to be quashed, the test to be applied by the Court is as to whether the uncontroverted allegation as made *prima facie* established the offence. It is also for the Court to take into consideration any such features that appear in a particular case to consider whether it is expedient and in the interest of justice to permit a prosecution to continue. This is so on the basis that the Court cannot be utilized for any oblique purpose and where, in the opinion of the Court, chances of an ultimate conviction are weak, and, therefore, no useful purpose is likely to be served by allowing a criminal prosecution to continue. The Court, while taking into consideration the said facts of a case, also quashed the proceeding even though it may be at the preliminary stage.

16. In the instant case, the learned Advocate for the petitioners repeatedly calls upon this Court to consider that the opposite party no. 2 not only filed the present complaint but she also filed cases under the Domestic Violence Act, Succession Act, and also partition suit. All those cases were filed by the opposite party no. 2 only to harass the petitioners. These surrounding facts are required to be considered while disposing of the instant application filed under Section 482 of the CrPC.

17. Having heard the learned counsel appearing on



behalf of the parties and on careful consideration of the entire materials on record, I find that the opposite party no. 2 has been able to prove that after the death of her husband, she was subjected to cruelty within the meaning of explanation “(a)” of Section 498A of the IPC. There is sufficient ground for further proceeding of the case. The opposite party no. 2 was compelled to file other cases in order to protect her right from domestic violence and to have the share in the property of her deceased husband to which she is lawfully entitled. The Court can assume that as the opposite party no. 2 was denied such rights and protection, she was compelled to take steps against the relatives of her matrimonial home. This Court is also entitled to take into consideration the pain and agony of a married woman whose husband dies within a few months of marriage in our tradition-bound society, where the relatives of the husband forget the cause of death of the husband and castigate and blame the wife as to the root cause of his death.

18. Taking all the aspects into consideration, this Court is of the view that the learned Magistrate rightly took cognizance of the offence against the petitioners under Section 498A and Section 504 of the IPC. However, I do not find any material for taking cognizance against the petitioners for



offences under Section 379/120B of the IPC. The order for taking cognizance against the petitioners under Section 379/120B of the IPC is quashed.

19. Accordingly, the instant Cr. Misc. Case is dismissed with above observation.

(Bibek Chaudhuri, J)

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