

IN THE HIGH COURT OF JUDICATURE AT PATNA

CRIMINAL MISCELLANEOUS No.51768 of 2015

Arising Out of PS. Case No.-776 Year-2014 Thana- PHULWARISHARIF District- Patna

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1. Farahat Wahab @ Farhat Bahab @ Farhat Wahab, W/o Abutalaha, R/o Sabait, P.S. Silao, District Nalanda.
2. Md. Abutalaha @ Abdul Bahab, S/o Nabi Hassan Mallik, R/o Sabait, P.S. Silao, District Nalanda.
3. Ehsan Ahmed @ Ehsan Mallik, S/o Late Sahabuddin R/o Sabait, P.S. Silao, District Nalanda.
4. Mussarat Wahab @ Nurusat Wahab @ Nusrat Bahab, W/o Dr. Anwar Imam, R/o Baitul, Mosarrat Shanti Bagh, New Karimganj, PSDistrict-Gaya.

... .. Petitioner/s

Versus

1. State of Bihar
2. Nilofar Sheharyar, W/o Yunus Wahab, Daughter of Md. Sheharyar Murtaza, Resident of Harun Nagar, Sector-2, House No 263, P.S. Phulwari Sharif, District- Patna, Bihar.

... .. Opposite Party/s

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with

CRIMINAL MISCELLANEOUS No. 22404 of 2016

Arising Out of PS. Case No.-776 Year-2014 Thana- PHULWARISHARIF District- Patna

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- 1. Abdul Wahab, Son of Abdul Rashid Resident of Road No. 09, New Karimganj, PS Civil lines, District Gaya.
- 2. Yusuf Wahab S/o Abdul Wahab Resident of Road No. 09, New Karimganj, PS Civil lines, District Gaya.
- 3. Farzana Sami@Farzana Sharma W/o Yusuf Wahab Resident of Road No. 09, New Karimganj, PS Civil lines, District Gaya.

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Criminal Procedure Code- Sec.482- Allegation of assault and torture against the petitioners- order of cognizance u/s 3 & 4 of Dowry Prohibition Act and Sec.498A of IPC are under challenge. (Para-1,2) Petitioners distant relative of husband of O.P. No.2- general and omnibus allegation not sufficient to compel them to undergo agony of the trial- possibility of naming all the family members by way of exaggeration is not ruled out- object of Sec.498A IPC is to combat the menace of harassment to a women at the hands of her husband and his relatives- but are used as weapons rather than shield by disgruntled wives- impugned order of cognizance quashed and set aside. (Para-6,7,8).----- (2012) 10 SCC 741, (2010) 7 SCC 667, (2015) 13 SCC 693, (2000) 5 SCC 207, (2014) 8 SCC 273- relied on.

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... .. Opposite Party/s

Appearance :
(In CRIMINAL MISCELLANEOUS No. 51768 of 2015)



For the Petitioner/s : Mr. Surendra Kumar Singh, Advocate
For the Opposite Party/s : Mr. Arshad Jameel Hashmi, Advocate
Mr. Kamal Kishore Singh, Advocate
Mr. J.Upadhyay, APP
(In CRIMINAL MISCELLANEOUS No. 22404 of 2016)
For the Petitioner/s : Mr. Anirudh Kumar Singh, Advocate
For the Opposite Party/s : Mr. Meena Singh, APP

CORAM: HONOURABLE MR. JUSTICE CHANDRA SHEKHAR JHA
ORAL JUDGMENT

Date : 04-03-2024

(In CR. MISC. No. 51768 of 2015)

1. The present application has been preferred for quashing the order dated 23.07.2015 passed by learned Judicial Magistrate 1st Class, Patna, in G.R. No. 7891 of 2014 arising out of Phulwarisharif P.S case no 776 of 2014, whereby and where under the learned Judicial Magistrate 1st Class, Patna, has taken cognizance under section 3 and 4 of the Dowry Prohibition Act and section 498 A of the Indian Penal Code, against the petitioners.

2. The case of prosecution, is a vivid one narrated in detail, and is based upon the typed written report of the informant namely Nilofar Sheharyar dated 09.12.2014, submitted before Officer In-Charge, Phulwarisharif Police Station, wherein it has been alleged



inter alia that:

- a) Informant was married with Yonis Wahab on 28.03.2010 at Patna according to Muslim rites and 5 lakhs cash and article worth 5 lakhs were given but after marriage, her husband and his other family members started taunting her because no car was given as dowry and they used to make fun of her parents.
- b) It is further alleged that both her "nanads" are married in the same colony and they spent a lot of time in their "maika" and they along with others also taunt her. The father in law and mother in law of the informant have, on the pretext of keeping the ornaments in the locker, taken the ornaments in their possession.
- c) It is further alleged that the husband of the informant is an engineer working in Dubai and he too started pressuring for a car and one day the entire family assaulted her. When a complaint was made to her husband about an incident of torture, he did not do anything.



d) It is further alleged that in November 2010, the informant was taken to Dubai and there also, she was mentally tortured. She became pregnant and she came back to Patna where she gave birth to a female child on 12.08.2011 but cost of hospital was borne by her father and her husband did not pay anything and when she came to Patna she was taunted for giving birth to a female child and the family members said that they would perform another marriage of her husband for a male child. Thereafter, she again went to Dubai.

e) It is further alleged that her devar (Brother-in-law) was sent to Dubai and they started torturing the informant. It is alleged that her passport and mobile phone was snatched and she was not allowed to go outside the house and also told to get the expenses of the child from her father. Meanwhile, she again became pregnant and her husband wanted her to undergo a sex determination test and when she refused she was badly assaulted on 10.05.2013, where her husband tried to kill



her by pressing her neck and somehow she was able to escape and informed her Mausi and Mausa in Abu Dhabi who came and took her.

f) It is further alleged that thereafter, her husband assured her of good treatment and so she again joined her husband but she was shocked to see that her mother-in-law and father-in-law were also present over there and they started torturing the informant for dowry. However, she came to Patna on 19.11.2013, and gave birth to a male child at Ramgarh but nobody came to see her. It is further alleged that the parents of the informant along with other relatives went to the place of her husband on 13.08.2014 where both the husbands of her "nanads" (sisters-in-law) were present from before who abused them and they flatly said that they will not accept the informant as wife of their brother. They have stopped the operation of the bank locker in order to prevent her from taking out her belongings and from January 2014 her husband has stopped talking to her



and further from April 2014 he has stopped giving any expenditure and as a result she is staying with her two small children at her parental house.

3. Learned counsel appearing for the petitioners submitted that all petitioners are in-laws of O.P. No. 2, who are living separately having no connection with the daily and domestic affairs of O.P. No. 2. It is further submitted that allegation as raised against petitioners is very much general and omnibus.

4. It is submitted from the narration as available through complaint petition, which is the basis of FIR, no *prima facie*, case is made out against petitioners and as such taking cognizance of the offence against petitioners is nothing but the abuse of process of law.

5. Learned APP duly assisted by learned counsel appearing on behalf of O.P. No. 2, while opposing the prayer of application submitted that petitioners actively participated during the occurrence



and as such a, *prima facie*, case is made out against them but fairly conceded that the petitioners are living separately, having no connection with daily and domestic affairs of O.P. No. 2.

6. Hon'ble Apex Court in ***Geeta Mehrotra and Another vs. State of U.P. and Another*** reported in ***(2012)10 SCC 741*** and ***Preeti Gupta and Another Vs. State of Jharkhand and Another*** reported in ***(2010) 7 SCC 667*** has been pleased to rule that there should be a clear allegation against relatives of the husband and vague and omnibus allegation would not be sufficient to compel them to undergo agony of the trial.

7. Hon'ble Apex Court in ***Monju Roy and Others Vs. State of West Bengal*** reported in ***(2015) 13 SCC 693*** has been pleased to observe that while we do not find any ground to interfere with the view taken by the courts below that the deceased was subjected to harassment on account of non-fulfillment of



dowry demand, we do not find any merit in the submission that possibility of naming all the family members by way of exaggeration is not ruled out".

Hon'ble Apex Court in Kans Raj Vs. State of Punjab reported in ***(2000) 5 SCC 207*** has been pleased to observe that a tendency has, however, developed for roping in all relations of the in-laws of the deceased wives in the matters of dowry deaths which, if not discouraged, is likely to affect the case of the prosecution even against the real culprits. In their over enthusiasm and anxiety to seek conviction for maximum people, the parents of the deceased have been found to be making efforts for involving other relations which ultimately weaken the case of the prosecution even against the real accused as appears to have happened in the instant case. ***Hon'ble Apex Court in Arnesh Kumar Vs. State of Bihar and Another*** reported in ***(2014) 8 SCC 273*** has been pleased to observe that there is a phenomenal increase in matrimonial disputes



in recent years. The institution of marriage is greatly revered in this country. Section 498-A IPC 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 IPC 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 IPC and other relevant offences.

8. In view of aforesaid factual and legal discussions, where petitioners are distant relative of



husband of O.P. No. 2 facing general and omnibus allegation. Accordingly, impugned order of cognizance dated 23.07.2015 with all its consequential proceedings, *qua*, petitioners arising thereof as passed in G.R. No. 7891 of 2014 arising out of Phulwari Sharif P.S. Case No. 776 of 2014, pending before learned Judicial Magistrate 1st Class, Patna is hereby quashed and set aside.

9. Hence, this application stands allowed.

10. TCR (Trial Court Records), if any, be returned to learned trial court alongwith the copy of this judgment.

(In CR. MISC. No. 22404 of 2016)

11. At the outset, learned counsel appearing for the petitioners submitted that petitioner no. 1, who is the father in-law of O.P. No. 2 died on 18.03.2022.

12. In view of submission, now this petition survives only for petitioners nos. 2 and 3 namely, Yusuf Wahab and Farzana Sami, who are elder brother-in-law



(Bhaisur) and sisters-in-law (Jethani), of O.P. No. 2.

13. The present application has been preferred for quashing the order dated 23.07.2015 passed by learned Judicial Magistrate 1st Class, Patna, in G.R. No. 7891 of 2014 arising out of Phulwarisharif P.S case no 776 of 2014, whereby and where under the learned Judicial Magistrate 1st Class, Patna, has taken cognizance under section 3 and 4 of the Dowry Prohibition Act and section 498 A of the Indian Penal Code, against the petitioners.

14. The case of prosecution, is a vivid one narrated in detail, and is based upon the typed written report of the informant namely Nilofar Sheharyar dated 09.12.2014, submitted before Officer In-Charge, Phulwarisharif Police Station, wherein it has been alleged inter alia that:

a) Informant was married with Yonis Wahab on 28.03.2010 at Patna according to Muslim rites and 5 lakhs cash and article worth 5 lakhs were given but after



marriage, her husband and his other family members started taunting her because no car was given as dowry and they used to make fun of her parents.

b) It is further alleged that both her "nanads" are married in the same colony and they spent a lot of time in their "maika" and they along with others also taunt her. The father in law and mother in law of the informant have, on the pretext of keeping the ornaments in the locker, taken the ornaments in their possession.

c) It is further alleged that the husband of the informant is an engineer working in Dubai and he too started pressuring for a car and one day the entire family assaulted her. When a complaint was made to her husband about an incident of torture, he did not do anything.

d) It is further alleged that in November 2010, the informant was taken to Dubai and there also, she was mentally tortured. She became pregnant and she came back to Patna where she gave birth to a female child on



12.08.2011 but cost of hospital was borne by her father and her husband did not pay anything and when she came to Patna she was taunted for giving birth to a female child and the family members said that they would perform another marriage of her husband for a male child. Thereafter, she again went to Dubai.

e) It is further alleged that her devar (Brother-in-law) was sent to Dubai and they started torturing the informant. It is alleged that her passport and mobile phone was snatched and she was not allowed to go outside the house and also told to get the expenses of the child from her father. Meanwhile, she again became pregnant and her husband wanted her to undergo a sex determination test and when she refused she was badly assaulted on 10.05.2013, where her husband tried to kill her by pressing her neck and somehow she was able to escape and informed her Mausi and Mause in Abu Dhabi who came and took her.

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assured her of good treatment and so she again joined her husband but she was shocked to see that her mother-in-law and father-in-law were also present over there and they started torturing the informant for dowry. However, she came to Patna on 19.11.2013, and gave birth to a male child at Ramgarh but nobody came to see her. It is further alleged that the parents of the informant along with other relatives went to the place of her husband on 13.08.2014 where both the husbands of her "nanads" (sisters-in-law) were present from before who abused them and they flatly said that they will not accept the informant as wife of their brother. They have stopped the operation of the bank locker in order to prevent her from taking out her belongings and from January 2014 her husband has stopped talking to her and further from April 2014 he has stopped giving any expenditure and as a result she is staying with her two small children at her parental house.

15. Learned counsel appearing for the



petitioners submitted that petitioners nos. 2 and 3 are elder brother-in-law and sisters-in-law of O.P. No. 2, who are living separately having no connection with the daily and domestic affairs of O.P. No. 2. It is further submitted that allegation as raised against petitioners is very much general and omnibus.

16. It is submitted from the narration as available through complaint petition, which is the basis of FIR, no *prima facie*, case is made out against petitioners and as such taking cognizance of the offence against petitioners is nothing but the abuse of process of law.

17. Learned APP duly assisted by learned counsel appearing on behalf of O.P. No. 2, while opposing the prayer of application submitted that petitioners actively participated during the occurrence and as such a, *prima facie*, case is made out against them but fairly conceded that the petitioners are living separately, having no connection with daily and domestic



affairs of O.P. No. 2.

18. Hon'ble Apex Court in ***Geeta Mehrotra and Another vs. State of U.P. and Another*** reported in ***(2012)10 SCC 741*** and ***Preeti Gupta and Another Vs. State of Jharkhand and Another*** reported in ***(2010) 7 SCC 667*** has been pleased to rule that there should be a clear allegation against relatives of the husband and vague and omnibus allegation would not be sufficient to compel them to undergo agony of the trial.

19. Hon'ble Apex Court in ***Monju Roy and Others Vs. State of West Bengal*** reported in ***(2015) 13 SCC 693*** has been pleased to observe that while we do not find any ground to interfere with the view taken by the courts below that the deceased was subjected to harassment on account of non-fulfillment of dowry demand, we do not find any merit in the submission that possibility of naming all the family members by way of exaggeration is not ruled out".



Hon'ble Apex Court in Kans Raj Vs. State of Punjab reported in ***(2000) 5 SCC 207*** has been pleased to observe that a tendency has, however, developed for roping in all relations of the in-laws of the deceased wives in the matters of dowry deaths which, if not discouraged, is likely to affect the case of the prosecution even against the real culprits. In their over enthusiasm and anxiety to seek conviction for maximum people, the parents of the deceased have been found to be making efforts for involving other relations which ultimately weaken the case of the prosecution even against the real accused as appears to have happened in the instant case. ***Hon'ble Apex Court in Arnesh Kumar Vs. State of Bihar and Another*** reported in ***(2014) 8 SCC 273*** has been pleased to observe that there is a phenomenal increase in matrimonial disputes in recent years. The institution of marriage is greatly revered in this country. Section 498-A IPC 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 IPC 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 IPC and other relevant offences.

20. In view of aforesaid factual and legal discussions, where petitioners are distant relative of husband of O.P. No. 2 facing general and omnibus allegation. Accordingly, impugned order of cognizance dated 23.07.2015 with all its consequential proceedings,



qua, petitioners arising thereof as passed in G.R. No. 7891 of 2014 arising out of Phulwarisharif P.S. Case No. 776 of 2014, pending before learned Judicial Magistrate 1st Class, Patna is hereby quashed and set aside.

21. Hence, this application stands allowed.

22. TCR (Trial Court Records), if any, be returned to learned trial court alongwith the copy of this judgment.

(Chandra Shekhar Jha, J)

Archana/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	06.03.2024
Transmission Date	06.03.2024

