

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.24052 of 2019

Arising Out of PS. Case No.-69 Year-2018 Thana- PATNA COMPLAINT CASE District-
Patna

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1. Nirmala Devi, Wife of Sita Ram Sao @ Sadhu Jee (Mother in law) Resident of Village-Telhara, P.S-Telhara, District-Nalanda.
 2. Sita Ram Sao, Son of Late Achhe Lal Sao (Father in law) Resident of Village-Telhara, P.S-Telhara, District-Nalanda.
 3. Jayanti Kumari @ Jayoti Kumari Daughter of Sita Ram Sao @ Sadhu Jee (Nanad) Resident of Village-Telhara, P.S-Telhara, District-Nalanda.
 4. Barsa Kumari Daughter of Sita Ram Sao @ Sadhu Jee (Nanad) Resident of Village-Telhara, P.S-Telhara, District-Nalanda.

... .. Petitioners.

Versus

1. The State of Bihar.
2. Radha Devi, Wife of Dilip Kumar, Resident of Village-Nathupur, P.S-Parsa Bazar, District-Patna.

... .. Opposite Parties.

Appearance :

For the Petitioner/s : Mr. Dharendra Kumar Sinha, Adv.
Mr. Arun Kumar, Adv.
For the Opposite Party/s : Mr. Suresh Prasad Singh, APP

CORAM: HONOURABLE MR. JUSTICE PRAKASH CHANDRA JAISWAL

ORAL JUDGMENT

Date : 25-04-2019

Heard learned counsel for the petitioners and learned APP for the State.

This application under Section 482 of the Code of Criminal Procedure has been filed for quashing the cognizance order dated 12.02.2018 passed by the S.D.J.M., Masaurhi, Patna in Complaint Case No. 69(C) of 2018, whereby the learned Magistrate finding prima facie case under Sections 498-A, 323, 504 and 379/34 of the Indian Penal Code ordered to issue



summon against the petitioners.

The factual matrix of the case is that complainant Radha Devi filed a complaint petition being Complaint Case No.69 (C) of 2018 against the petitioners and other accused persons under Sections 498-A, 323, 504 and 379/34 of the Indian Penal Code and $\frac{3}{4}$ of the Dowry Prohibition Act with the allegation in succinct that the marriage of the complainant was performed with Dilip Kumar on 16.07.2013. After marriage and bidai she went to her marital house and stayed there for six months Thereafter, her husband started demanding Rs.2 lakhs to do the business of medicine and due to not coughing up of the said demand all the accused persons started tormenting her. On getting information of the said occurrence her maternal people came to her and tried to persuade the accused persons but in vain. Then they took the complainant to maternal house. After six months her husband arrived at her maternal house and put the aforesaid demand and slated and tormented her. Later her father dropped her at her marital house but the accused persons again started subjecting her to various sorts of torture. Any how her father gave Rs.30,000/- to Dilip Kumar. But even then the accused persons continued to pester the complainant on the said demand. On getting information her father arrived at her marital



house and informed the matter to the P.S. Masaurhi, Patna and P.S. Parsa but in vain. Her husband Dilip Kumar never established conjugal life with her.

On the aforesaid complaint petition, solemn affirmation of the complainant was recorded and after perusing the record and solemn affirmation of complainant learned Magistrate took cognizance of the offence against the petitioners and Dilip Kumar (husband of the complainant) by the impugned order.

It is submitted by learned counsel for the petitioners that the petitioner no.1-Nirmala Devi happens to be mother-in-law, petitioner no.2-Sita Ram Sao happens to be father-in-law, petitioner nos.3 & 4, namely, Jayanti Kumari @ Jayoti Kumari and Barsa Kumari happens to be sister-in-law (Nanad) of the complainant. The allegation of making dowry demand is not against the petitioners rather against Dilip Kumar. Only allegation against the petitioners is tormenting the complainant over dowry demand. But the aforesaid allegation is not specific rather general and omnibus in nature. Petitioners have neither demanded any dowry nor subjected the complainant to any sort of torture over said demand, hence the order taking cognizance against the petitioner is nothing but



abuse of the process of Court.

On the other hand, learned APP for the State opposed the prayer of learned counsel for the petitioners.

From perusal of the record, it appears that there is no specific allegation of demanding dowry against the petitioners rather against the husband of the complainant i.e. Dilip Kumar. The only allegation against the petitioners is that the petitioners along with other accused persons tormented the complainant over the dowry demand which is not specific rather vague and omnibus in nature and in my considered opinion it would not be sufficient to put the petitioners on trial.

The Hon'ble Apex Court in **Geeta Mehrotra and another vs. State of U.P. and another** reported in (2012) 10 Supreme Court Cases 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. Hon'ble Apex Court in the **Monju Roy and others vs. State of West Bengal** reported in (2015) 13 Supreme Court Cases 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 Supreme Court Cases 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 Supreme Court Cases 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 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. This High Court in **Brijesh Das @ Brijesh Kumar Das and others vs. The State of Bihar and another** reported in **2012 (2) PLJR 545** has also held that there is specific allegation made against husband and no statement that other relatives assaulted the complainant. Allegations made against petitioner nos.2 to 6 are vague and omnibus allegation made against the relatives of the husband, would not be sufficient to put them on a trial and set aside the cognizance order against the petitioner nos.2 to 6 who happen to be in-laws of the complainant.

In the facts and circumstances of the case and the discussions made by me herein-above, the aforesaid cognizance



order taken against the petitioners is hereby quashed and this application is allowed.

(Prakash Chandra Jaiswal, J.)

Trivedi/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	30.04.2019
Transmission Date	30.04.2019

