

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.17273 of 2015

Arising Out of Case No.-1554 Year-2014 Thana- PATNA COMPLAINT CASE District-
Patna

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1. Vivek Gupta son of Jai Prakash Gupta
 2. Jai Prakash Gupta, son of Late Vishwanath Gupta @ Bishwanath Prasad,
 3. Mira Devi @ Meera Gupta, wife of Jai Prakash Gupta, All resident of Mohalla- Sahebganj, Sonar Patti, P.S.- Chapra Town, District- Saran
- Petitioner/s

Versus

1. The State Of Bihar
 2. Chanda Gupta, wife of Vivek Gupta, resident of Mohalla- Sahebganj, Sonar Patti, P.S.- Chapra Town, District- Saran, presently residing at- daughter of Shri Arvind Kumar, resident of Mohalla Sabji Bazar, P.O. and P.S.- Khusrupur, District- Patna.
- Opposite Party/s

Appearance :

For the Petitioner/s : Mr. D. K. Sinha, Sr. Advocate with
Mr. Abhinav Raj, Advocate
For the State : Mr. Jharkhandi Upadhyay, APP

CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH
ORAL JUDGMENT

Date : 05-04-2019

Heard learned counsel for the petitioners and learned A.P.P. for the State.

2. Despite opposite party no. 2 having entered appearance and counter affidavit also filed on her behalf and further name of learned counsel printed in the cause list, nobody appeared when the matter was taken up and heard.

3. The petitioners have moved the Court under Section 482 of the Code of Criminal Procedure, 1973 for the following relief:

“ That this application is directed for quashing of Order taking cognizance dated 18/03/15



against the petitioners under section 498(A) of the Indian Penal Code in connection with Complaint Case No. 1554/2014, passed by Learned Judicial Magistrate 1st Class, Patna City.”

4. The allegation against the petitioners and two others in the complaint filed by the opposite party no. 2, who is the wife of petitioner no. 1, is of torture, demand of dowry, assault and also taking away the minor son of the opposite party no. 2 from her custody. After enquiry, the Court has taken cognizance only against the present three petitioners by order dated 18.03.2015.

5. Learned counsel for the petitioners submitted that even from the plain reading of the complaint, it is apparent that no criminal offence is made out against the petitioners. It was submitted that the complaint itself discloses that Rs. 8,00,000/- was being asked for doing business by the accused which itself would not constitute an offence under Section 498A of the Indian Penal Code. For such proposition, learned counsel relied upon decisions of the Hon'ble Supreme Court in **Appasaheb v. State of Maharashtra** reported as **(2007) 9 Supreme Court Cases 721**, the relevant being at paragraphs no. 10, 11 and 12 and **State of Karnataka v. Dattaraj** reported as **(2016) 12 Supreme Court Cases 331**, the relevant being at paragraphs no. 19, 20 and 21. Learned counsel submitted that the demand for emergency



expenses, household expenses and purchasing manure could not be said to be a demand for dowry as has been held by the Hon'ble Court in **Appasaheb** (supra) and that the demand for dowry has to be in close proximity from the date of allegation as has been held in **Dattaraj** (supra).

6. Learned A.P.P. submitted that the Court, upon conducting enquiry and relying upon the materials before it, has proceeded to take cognizance which cannot be said to be bad in law. It was further submitted that the fact that out of five accused, only against three accused, cognizance has been taken, itself goes to show that there has been proper application of judicial mind by the Court concerned.

7. Having considered the facts and circumstances of the case and submissions of learned counsel for the parties, the Court does not find any merit in the present application.

8. The allegation against the petitioners of demand of Rs. 8,00,000/- dowry has been supported by the witnesses during enquiry. Reliance of learned counsel for the petitioners on the judgment of the Hon'ble Supreme Court in **Appasaheb** (supra) does not appear to be of any help to them, for the reason, that in the said case, the conviction of the person was under Section 304-B read with Section 34 of the Indian Penal Code. In that context,



the Hon'ble Court had observed that the demand made by the accused-appellant to meet urgent domestic expenses and purchasing manure could not be said to a demand for dowry. However, at paragraph no. 11, of the said judgment, which has also been relied upon by learned counsel for the petitioners, it has been observed as under:

“ 11. In view of the aforesaid definition of the word "dowry" any property or valuable security should be given or agreed to be given either directly or indirectly at or before or any time after the marriage and in connection with the marriage of the said parties. Therefore, the giving or taking of property or valuable security must have some connection with the marriage of the parties and a correlation between the giving or taking of property or valuable security with the marriage of the parties is essential.....”

9. From the aforesaid, it is clear that the Hon'ble Court has also accepted that giving or taking of property or valuable security must have some connection with the marriage of the parties and a correlation between the giving or taking of property or valuable security with the marriage of the parties. In the present case, undoubtedly, the allegation is that the demand of Rs. 8,00,000/- was made and threat was that the opposite party no. 2 would not be kept in the matrimonial home and further that her husband would re-marry. Thus, clearly there is a direct nexus between the demand of dowry and marriage.



10. Similarly, in **Dattaraj** (supra), at paragraph no. 19, the Hon'ble Court has held as under:

“19. Insofar as the demand of Rs.20,000/- for the purchase of agricultural land is concerned, it is apparent that the same was allegedly made when Dattaraj was in Dubai. The said demand was allegedly made by Ningesh (respondent–accused), the father of Dattaraj, when he had gone to leave Savita at her maternal home. Dattaraj is stated to have returned to India from Dubai eight to ten months, after the above demand. A female child was born to Savita about a year after the return of Dattaraj to India. After the birth of the female child, Savita had remained in her maternal house, for about four to five months. Therefore, even if the above oral allegation is accepted as correct, it was a demand made about two years before the occurrence. The same was too remote to the occurrence, and therefore, would not satisfy the requirement of “soon before her death” contemplated under Section 304-B(1) of the Penal Code.”

11. From the aforesaid also, the Court has not negated that the demand of Rs. 20,000/- for purchase of agricultural land would not come under the demand of dowry. What has been held is that the death had occurred after two years of the allegation for such demand of money which was too remote to the occurrence and therefore would not satisfy the requirement of “soon before her death” contemplated under Section 304- B (1) of the Indian Penal Code. Thus, the same is also of no use to the petitioners in the present case.



12. On the contrary, the Court finds that the petitioners having taken away the minor son from the opposite party no. 2, by itself is sufficient to constitute cruelty, as taking away a minor son from her mother is nothing short of cruelty.

13. For reasons aforesaid, the application stands dismissed.

(Ahsanuddin Amanullah, J)

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