

IN THE HIGH COURT OF JUDICATURE AT PATNA

Mina Devi Seth & Ors.

Vs.

State of Bihar & Anr.

Criminal Miscellaneous No. 48439 of 2018

27 March 2023

(Hon'ble Mr. Justice Sandeep Kumar)

Issue for Consideration

Whether prosecution can be sustained against relatives of the husband when the allegations are general and omnibus without specific roles attributed to them.

Headnotes

Petitioner no.1 is the aunty (Buaa) of the husband of the informant and petitioner nos. 2 and 3 are married sisters-in-law of the informant and they are residing separately at their matrimonial home i.e. in West Champaran (Bihar), Ranchi and Nagpur. From reading of the F.I.R., it appears that no specific and distinct allegations have been made against any of the petitioners and therefore, it is difficult to ascertain the role played by each accused persons. (Para 9)

Prosecution of the relatives of the husband can be quashed even at the late stage if the prosecution is found to be illegal. (Para 11)

FIR is quashed. (Para 14)

Case Law Cited

Kahkashan Kausar @ Sonam v. State of Bihar, **2022 SCC OnLine SC 162**;
Anand Kumar Mohatta v. State (NCT of Delhi), **2019 11 SCC 706**

List of Acts

Indian Penal Code, 1860; Dowry Prohibition Act, 1961

List of Keywords

Quashing of proceedings; General allegations; Abuse of process of law; Dowry Prohibition Act; Section 498-A IPC

Case Arising From

Rampur P.S. Case No.145 of 2013, District- Gaya

Appearances for Parties

For the Petitioners : Mr. S.D. Sanjay, Sr. Advocate; Ms. Priya Gupta, Mr. Lokesh Kumar, Advocate

For the State : Mr. Nagendra Prasad, APP

For Opposite Party No.2 : Mr. Deepak Kumar, Advocate

Headnotes Prepared by Reporter: Amit Kumar Mallick, Adv.

Judgment/Order of the Hon'ble Patna High Court

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.48439 of 2018

Arising Out of PS. Case No.-145 Year-2013 Thana- RAMPUR District- Gaya

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1. Mina Devi Seth @ Meena Seth, W/o S.N. Seth, R/o Mohalla- Miscot, Motihari, P.S.- Motihari, District- East Champaran.
 2. Neena Khanna @ Neena Kumar @ Guriya W/o Sujeet Kumar, R/o J.P. Singh, Quarter No. E-349/2, Sector 2, Dhurwa, P.S.- Jaeannathpur, District- Ranchi.
 3. Rima Sahani @ Reenna Sahani W/o Vikrant Surendra Kumar Sahani, R/o 524, Clark Town Nagpur, P.O.- Bezonbag, P.S.- Jaripatka, District- Nagpur.

... .. Petitioners

Versus

1. State of Bihar
2. Bandana Khanna W/o Shri Samir Khanna and D/o Radhe Shayam Tandan, R/o Mohalla- Gewal Bigha, Munni Masjid Gali, P.S.- Rampur, Distt.- Gaya.

... .. Opposite Parties

Appearance :

For the Petitioners	:	Mr. S.D. Sanjay, Sr. Advocate Ms. Priya Gupta, Advocate Mr. Lokesh Kumar, Advocate
For the State	:	Mr. Nagendra Prasad, APP
For Opp. Party No.2	:	Mr. Deepak Kumar, Advocate

CORAM: HONOURABLE MR. JUSTICE SANDEEP KUMAR

ORAL JUDGMENT

Date : 27-03-2023

Heard learned counsel for the petitioners, learned APP for the State and learned counsel for the opposite party no.2.

2. This application has been filed for quashing of the order dated 20.12.2016 passed by learned Chief Judicial Magistrate, Gaya, in Tr. No. 3964 of 2016, arising out of Rampur P.S. Case No. 145 of 2013, by which summons have been issued against the petitioners although cognizance has



already been taken against the petitioners on 19.11.2013 for the offences under sections 341, 323, 498-A & 379/34 of the Indian Penal Code and under Section 3/4 of the Dowry Prohibition Act.

3. The prosecution case is that the informant (opposite party no.2) was married to co-accused Samir Khanna in the year 2002 according to Hindu rites and customs. Out of their wedlock, two children were born. It is alleged that the husband of the informant was a habitual drunkard and womanizer and he used to assault the informant for demand of dowry. It is alleged that the informant has told this fact to her in-laws but all of them continued to torture her physically and mentally. It is also alleged that on 23.05.2013, the informant found her husband in compromising position with one maid servant in the house. When the informant objected, all the accused persons assaulted her and was ousted from her matrimonial house. It is further alleged that on 14.07.2013 when the informant reached the house of her husband along with her parents, they were assaulted by the accused persons

4. Today, an Interlocutory Application has been filed by the petitioners seeking amendment in the prayer portion of this application challenging the order dated 05.04.2022 passed by learned S.D.J.M., Gaya, by which the charges have



been framed against the petitioners for the offences under Sections 341, 323, 379/34, 498-A of the Indian Penal Code and under Section 3/4 of the Dowry Prohibition Act as well as the order dated 22.11.2022 passed by learned Sessions Judge, Gaya, in Criminal Revision No. 55 of 2022, by which the Revision Application filed against the aforesaid order has been rejected.

5. The Interlocutory Application is allowed and the averments made in the said Interlocutory Application are being treated to be part of main application.

6. Learned senior counsel for the petitioners submits that petitioner no. 1 is the aunty (Buaa) of the husband of the informant and petitioner nos. 2 and 3 are married sisters-in-law of the informant and they are residing separately at their matrimonial home. He further submits that there is general and omnibus allegations against the petitioners. He also submits that petitioner no.1 is a retired teacher aged about 72 years and she is living in West Champaran district and petitioner nos. 2 and 3 are staying in Ranchi and Nagpur and therefore, they have no concern with the affairs of the family of the informant and entire prosecution against the petitioners is an abuse of the process of the Court because it is a dispute between the husband and the wife.



7. Learned counsel for the opposite party no.2 opposed this application by submitting that in this case charges have been framed and trial is going on and therefore, this Court may not interfere in the matter.

8. I have considered the submissions of the parties and also perused the materials available on record.

9. It is an admitted position that petitioner no.1 is the aunty (Buaa) of the husband of the informant and petitioner nos. 2 and 3 are married sisters-in-law of the informant and they are residing separately at their matrimonial home i.e. in West Champaran (Bihar), Ranchi and Nagpur. From reading of the F.I.R., it appears that no specific and distinct allegations have been made against any of the petitioners and therefore, it is difficult to ascertain the role played by each accused persons.

10. Considering the aforesaid facts as also the law laid down by the Hon'ble Supreme Court in the case of *Kahkashan Kausar @ Sonam vs. State of Bihar* reported in *2022 SCC OnLine SC 162*, the prosecution against these petitioners cannot continue.

11. The contention of learned counsel for the opposite party no.2 that since the charges have been framed against the petitioners and trial is going on, this Court may not



interfere in the matter is misconceived in view of the decision of the Hon'ble Supreme Court in the case of *Anand Kumar Mohatta vs. State (NCT of Delhi)* reported in *2019 11 SCC 706*, wherein it has been held that the prosecution of the relatives of the husband can be quashed even at the late stage if the prosecution is found to be illegal.

12. For the reasons discussed above, this application is allowed.

13. Accordingly, the order dated 20.12.2016 passed by learned Chief Judicial Magistrate, Gaya, in Tr. No. 3964 of 2016, arising out of Rampur P.S. Case No. 145 of 2013, by which summons have been issued against the petitioners, the order dated 05.04.2022 passed in by the learned S.D.J.M., Gaya, by which charges have been framed against the petitioners and the order dated 22.11.2022 passed by learned Sessions Judge, Gaya in Criminal Revision No. 55 of 2022, by which the Revision Application filed by the petitioners has been rejected are hereby set aside.

14. Consequently, the F.I.R. vide Rampur P.S. Case No. 145 of 2013 registered for the offences under Section 341, 323, 498-A/34 of the Indian Penal Code and under Section 3/4 of the Dowry Prohibition Act and all other consequential



proceedings arising out of the said F.I.R. are also quashed in the
interest of justice.

(Sandeep Kumar, J)

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AFR/NAFR	A.F.R.
CAV DATE	N/A
Uploading Date	29.03.2023
Transmission Date	

