

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No. 48959 of 2014

Arising Out of Complaint Case No.- C1/1534 Year-2012 Thana- SITAMARHI COMPLAINT
CASE District- Sitamarhi

1. Bablu Khan, Son of Late Akbar Ali Khan.
2. Nusrat Khanam, Wife of Bablu Khan.
3. Asraf Khan, Son of Late Akbar Ali Khan.
4. Bebi Khanam, Wife of Asraf Khan. All resident of Village - Chaita Chorama Paithan Toli, P.S. - Pakari Dayal, District - East Champaran.

... .. Petitioner/s

Versus

1. The State of Bihar.
2. Musrat Khanam, Wife of Md. Aslam Khan, Daughter of Nasrul Khan at present residing at Village - Joriyahi, P.S. - Bairganiya, District - Sitamarhi.

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr. Uday Kumar, Advocate
For the State	:	Mr. Jharkhandi Upadhyay, A.P.P.
For the Opposite Party/s	:	Mr. Alok Kumar Jha and Mr. Santosh Kumar Pandey, Advocates

**CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN
AMANULLAH**

ORAL JUDGMENT

Date : 27-03-2019

Heard learned counsel for the petitioners; learned A.P.P.
for the State and learned counsel for the opposite party no. 2.

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

*“That this is an application for quashing
the order dated 12.12.2012 passed by the learned
Sub-Divisional Judicial Magistrate, Sadar,
Sitamarhi in Tr. No. 2584/2014 arising out
Complaint Case No. C1/1534/2012 whereby and*



whereunder the learned Sub-Divisional Judicial Magisthusband rate, Sadar, Sitamarhi has been pleased to take cognizance against these petitioners under Section 498 (A) of the Indian Penal Code and further be pleased to direct the complainant to submit necessary requisite and also directed the office to issue summons against the accused persons.”

3. The allegation against the petitioners is of demand of dowry and torture. However, the thrust is against the husband, not the petitioners in the present proceeding, who is said to have married again and keeping two other wives at Mumbai and refusing to accept the petitioners and her two sons without payment of Rs. 5 lakhs for purchase of a *Kholi*.

4. Learned counsel for the petitioners submitted that they are the brothers of the husband of the opposite party no. 2 and their wives, who have nothing to do with the matrimonial discord between the parties. Learned counsel submitted that in the complaint itself, it has been stated that the husband of the opposite party no. 2 is living in Mumbai with his two wives and the children from those wives. Learned counsel submitted that the allegation against them of demand of dowry and torture is cosmetic. At this juncture, on a direct query of the Court as to whether the petitioners, who are living in the ancestral home of the husband of the opposite party no. 2 are ready to give space for living to the opposite party no. 2 and her two sons, in accordance



with the share of her husband, learned counsel for the petitioners submitted that they are ready to give the share of the husband of the petitioners to the opposite party no. 2, who can come and live there and deal with the same as she likes. Learned counsel drew the attention of the Court to the decision of the Hon'ble Supreme Court in **Preeti Gupta v. State of Jharkhand** reported as **(2010) 7 SCC 667**, where it has been held that the allegations against the husband's relatives has to be scrutinized with great care and circumspection.

5. Learned A.P.P. and learned counsel for the opposite party no. 2 submitted that there is demand of dowry and the husband is not keeping her. However, on a direct query of the Court to learned counsel for the opposite party no. 2 as to how the petitioners, who are not living in Mumbai and also there being no allegation against them with regard to not allowing the opposite party no. 2 to reside in the matrimonial home, why criminal proceeding against them should continue, learned counsel could not give any reply. However, learned counsel submitted that the opposite party no. 2 and her two sons may be permitted to reside in the matrimonial/ancestral home of the husband of the opposite party no. 2.



6. At this juncture, learned counsel for the petitioners reiterated that they have no objection and that they would rather provide space equivalent to the share of the husband of the opposite party no. 2 for her to live and reside as per her wish.

7. Learned counsel for the opposite party no. 2 also agreed that she would, as and when desired, live in the matrimonial home.

8. For reasons aforesaid, the Court finds that a case for interference has been made out. Though there may be allegations against the petitioners but they are general and omnibus and further, when admittedly the main grievance is against the husband of having two more wives who live at Mumbai and not allowing the opposite party no. 2 and her two sons to live with him, coupled with the fact that a categorical stand has been taken before the Court on behalf of the petitioners that they shall give sufficient place/space, as per the share of the husband of the opposite party no. 2, in the ancestral matrimonial home to the opposite party no. 2 so that as and when she desires, she may come and reside there, the Court finds that letting the present criminal proceeding to continue would be an abuse of the process of the Court.



9. Accordingly, the application is allowed. The entire criminal proceeding arising out of Complaint Case No. C1/1534/2012 (T.R. No. 2584 of 2014), including the order dated 12.12.2012, by which cognizance has been taken, as far as it relates to the petitioners, stands quashed. However, the same shall be subject to the petitioners handing over the vacant possession of the area which falls in the share of the husband of the opposite party no. 2 to her within one month from today, failing which the present order shall stand recalled and the application shall stand dismissed. Once given possession, the opposite party no. 2 shall be entitled to put her lock in the area and deal with the same as she may desire.

(Ahsanuddin Amanullah, J.)

P. Kumar

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