

In The Court of Md Shuaib Judicial Magistrate First Class, Sitamarhi.

Complaint Case Number- 1172/2022

Hema Kumari @ Hema Devi Complainant
versus
Bindeshwar Prasad and Others.....Accused

Date	ORDER	Remarks
15.03.2023	Complainant is represented through her Learned Counsel. Case called out. Learned Counsel of Complainant appeared. Heard Ld. Counsel in length on point of prima facie case, and perused the case record. From perusal of case record, it transpires that case of complainant in brief is that, she was married with Bindeshwar Shah in the year 2008 according to Hindu customs. After 2-3 months of solemnization of marriage, her husband went to foreign nation from Nepal. Presently her husband is living in Qatar. Complainant's Bhaisur and deyadin used to assault her whenever she demands maintenance. They accepted to provide maintenance in Panchayti but they gave maintenance allowance only for one month. Complainant had three children out of her wedlock. Her husband gives his entire earning to her Bhaisur and Deyadin. Complainant has not filed any case for payment of maintenance. Complainant has been denied share in the property. She wants her share in the property and maintenance allowance. Complainant has got examined three witnesses in support of her case. I/W-1 Baiju Prasad @ Baijnath Prasad, uncle of complainant has stated in Para 02 that Bhaisur and Jethani of complainant has send her husband to abroad for earning livelihood. Hema's husband did not provide maintenance. <i>Panchayti has taken place and it has been said that either partition the land or provide maintenance allowance. Hema's bhaisur is not partitioning the land.</i> Hema got maintenance for some days which has been denied later on. In Para 03 it has been stated that Bhaisur of Hema tried to set her on fire by pouring the Kerosine Oil, which has not been affirmrd by complainant. I/W-2 Manish Kumar, brother of complainant has stated in Para 03 that his brother-in-law has got his visa issued in the name of Ram Sewak. In Para 06, it has been stated that his brother-in-law has two passport with two different name. He has not informed the matter to the Embassy. These facts have not been confirmed by complainant and I/W-1. I/W-3 Veena Devi, Mother of complainant has stated in Para 05 that Hema's Bhaisur assaulted Hema resulting in fracture in her	

Continue 15.03.2023	finger, for which a case has been got registered in Mahila Police Station. This fact has not affirmed by complainant and above mentioned Inquiry Witnesses. In Para 09, it has been stated that <i>the matter will be neutralised if the land be partitioned and her daughter will statrt living in her marital home.</i> Complainant has filed xerox of application filed before Gram Kachahri, Parsandi which lacs signature of complainant, and resolution passed in Panchayti, in which it has been directed that Ram Sewak Shah, Bhaisur of Complainant will provide maintenance allowance of Rs. 3,500/- per month. Bindeshwar Shah will have to return from abroad, failing which share of Complainant shall be allotted to her. From above facts and circumstances it transpires that main grievance of complainant is payment of maintenance allowance and partition of land. Here, it is relevant to mention here that accused and complainant are governed by Hindu Law, under which complainant is not a coparcener in her in-laws property. Partition of Joint Hindu Family property is the relief of purely Civil in Nature. So far as payment of maintenance allowance is concerned, it is beyond the jurisdiction of this Court. Complainant has not alleged any cruelty by her Bhaisur or Deyadin for or in connection with any demand for dowry. No case details of Mahila Police Station Case has been filed by or on behalf of complainant. No medical prescription/injury report has been brought on record which supports that finger of complainant got fractured. Hon'ble Apex Court in "<u>Mohammad Ibrahim and Others versus State of Bihar and Others</u>" [(2003) 3 SCC (Cri) 929] held that <i>"This Court has time and again drawn attention to the growing tendency of complainant's attempting to give the cloak of a criminal offence to matters which are essentially and purely civil in nature, obviously either to apply pressure on the accused, or out of enmity towards the accused, or to subject the accused to harassment. Criminal courts should ensure that proceedings before it are not used for setting scores or to pressurize parties to settle civil dispute"</i>. Again Hon'ble Supreme Court of India observed in the case of "<u>The Commissioner of Police and Others versus Devendra Anand</u>" [Cr. Appeal No. 834/2017 (Dated 08.08.2019)] as follows - <i>"Even considering the nature of allegations in the complaint, we are of the firm opinion that no case is made out for further proceedings, if the case involves a civil dispute and for setting a civil dispute, the criminal complaint has been filed, which is nothing but abuse of process of law"</i>. The Hon'ble Supreme Court of India in "<u>Onkar Nath Mishra and Others versus State (NCT of Delhi) and Others</u>" [2007 SCC OnLine SC 1558 (Para 20)] held that <i>"Section 498-A I.P.C was introduced with the avowed object to combat the menace of Dowry</i>	
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Continue 15.03.2023	<i>Deaths and harrasment to a women at the hands of her husband or his relatives. Nevertheless, the provision should not be used as a device to achieve oblique motives”.</i> It is well settled law that “<i>for the purpose of Section 498-A I.P.C, harassment simpliciter is not cruelty</i>”. [<u>State of Andhra Pradesh versus M. Madhusudan Rao 2008 SCC OnLine SC 1615</u>] From the above facts and circumstances of the case and also on the basis of above mentioned Law laid down by Hon’ble Supreme Court this court does not find any prima facie cogent materials available on record to proceed further against proposed accused. Accordingly, this Complaint petition stands dismissed under section 203 of Cr.P.C. O/C is directed to upload the order in CIS and update the CIS accordingly. O/C is further directed to consign the record to record room as per Rules. Md Shuaib Judicial Magistrate First Class Sitamarhi.	
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