

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.11231 of 2013

Arising Out of PS.Case No. -255 Year- 2012 Thana -NAWADAH COMPLAINT CASE District- -

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1. Sabo Devi D/O Radhey Kewat @ Rajesh Kewat Resident Of Village- Navin Nagar, P.S.- Dipnagar, P.O.- Tungi, District- Nalanda
 2. Radhey Kewat @ Rajesh Kewat S/O Late Bhagwan Kewat Resident Of Village- Navin Nagar, P.S.- Dipnagar, P.O.- Tungi, District- Nalanda
 3. Chinta Devi W/O Radhey Kewat @ Rajesh Kewat Resident Of Village- Navin Nagar, P.S.- Dipnagar, P.O.- Tungi, District- Nalanda
 4. Sanoj Kewat S/O Radhey Kewat @ Rajesh Kewat Resident Of Village- Navin Nagar, P.S.- Dipnagar, P.O.- Tungi, District- Nalanda

.... Petitioner/s

Versus

1. The State Of Bihar
2. Santosh Kumar S/O Shri Baleshwar Kewat R/O Village- Panshala, P.S.- Muffasil, District- Nalanda

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Krishna Prasad Singh, Sr.Adv.
Mr. M.K. Singh, Adv.
Mr. Bhaskar Shankar, Adv.
For Opposite Party No.2 : Mr. Sheo Kumar Prasad, Adv.
For the State : None.

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 23-06-2015

In the present application filed under section 482 of the Code of Criminal Procedure, petitioner no.1 Sabo Devi is the wife of the complainant whereas petitioner nos.2, 3 and 4, namely, Radhey Kewat @ Rajesh Kewat, Chinta Devi and Sanoj Kewat are father-in-law, mother-in-law and brother-in-law respectively of the complainant.

2. The complainant has alleged in the complaint filed on 13.03.2002 that on 06.03.2012 at about 4.00 a.m. when he entered in his home, his wife started abusing and assaulting him. Thereafter, she



took away one box containing silver and gold ornaments and Rs.15,000/- cash. The other accused persons were waiting outside the house with a vehicle and the wife of the complainant climbed onto the vehicle and the driver sped away. The complainant was examined on solemn affirmation and in support of the allegation two other witnesses, namely, Lakhanendra Kewat and Arun Yadav were examined in course of enquiry.

3. Enquiry witness no.1 Lakhanendra Kewat, who was examined on 24th April, 2012, has deposed that the alleged occurrence took place one month earlier. According to him, on the date of occurrence, an altercation had taken place between the complainant and the petitioners and thereafter they fled away with a box on a vehicle. Enquiry Witness No.2 Arun Yadav was examined on 28th May, 2012. In his deposition he has stated that the occurrence took place about two and a half months ago and when he reached near the place of occurrence, he found that the wife of the complainant was having a jhola in her hand. She sat with other accused persons on onto the vehicle which sped away.

4. On the basis of such evidence collected in course of enquiry, the learned Judicial Magistrate 1st Class, Nawada summoned the petitioners to face trial vide order dated 04.07.2012. The aforesaid order dated 04.07.2012 is under challenge in the present application.

5. Heard learned counsel for the petitioners and learned counsel for the opposite party no.2. None appears on behalf of the State.

6. It has been contended that the allegations made in the complaint petition are out-and-out false. The witnesses examined in course of enquiry have not corroborated the allegations made in the complaint. Though according to the complainant, the alleged incident had taken place on 6th March, 2012 at 4.00 a.m. but while being examined in course of enquiry on 24th April, 2012, enquiry witness no.1 Lakhanendra Kewat has stated that the occurrence took place one month earlier, which means that, according to him, the occurrence had taken place on 24th March, 2012. Similarly, though there is allegation that the wife of the complainant fled away with a box containing ornaments and cash but enquiry witness no.2 Arun Yadav has deposed in course of enquiry that when he reached near the place of occurrence, he found that petitioner no.1 Sabo Devi was having a Jhola in her hand. There is no reasonable explanation as to why the complaint was filed after seven days of the date of occurrence. It has been contended that petitioner no.1 Sabo Devi was being subjected to cruelty at the hands of the complainant and his relatives at her matrimonial home and she was forced to leave the house for which a case under section 498-A IPC has been instituted

against the complainant.

7. Learned counsel for the opposite party no.2 has submitted that the allegations made in the complaint do attract ingredients of the offence punishable under section 379 of the Indian Penal Code and hence there is no illegality in the impugned order dated 04.07.2012.

8. Having heard respective counsel for the parties, I find force in the arguments advanced by the learned counsel for the petitioners. There is unexplained and unreasonable delay in filing the complaint. The allegations made in the complaint have not been corroborated by the witnesses examined in course of enquiry. According to the enquiry witness no.1 the occurrence took place on or about 24th March, 2012 and as per enquiry witness no.2 when the wife of the complainant came out of her matrimonial home she was having a Jhola in her hand. Apparently, the prosecution case does not match with the statements made by the witnesses in course of enquiry. Further, the allegations made in the complaint are too vague. Though, the complainant has alleged that the accused persons came on a vehicle but neither the registration number nor the type of vehicle has been given in the complaint or in the statement of the complainant or any of his witnesses.

9. Having regard to the circumstances narrated and explained above, I am of the view that an attempt has been made by the

complainant to frame his wife and her relatives in a false case due to matrimonial discord. It is well settled that in exercise of powers conferred under Sections 482 and 483 of the Code, a duty has been cast upon the court to ensure that criminal prosecution is not used as instrument of harassment or for seeking private vendetta or with an ulterior motive to pressurize the accused.

10. In *State of Haryana Vs. Bhajan Lal [1992 Supp (1) SCC 335]*, the Supreme Court has laid down principles on which Court can quash criminal proceedings under section 482 of the Code. These are as follows :-

“102.

- (1) Where the allegations made in the First Information Report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima-facie constitute any offence or make out a case against the accused.
- (2) Where the allegations in the First Information Report and other materials, if any, accompanying the F.I.R. do not disclose a cognizable offence, justifying an investigation by police officers Under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.
- (3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.
- (4) Where, the allegations in the F.I.R. do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

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- (5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.
- (6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.
- (7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.”

11. Principle Nos. (5) and (7) are clearly applicable in the present case.

12. As a result, the application is allowed. The impugned order dated 04.07.2012 passed by the learned Judicial Magistrate 1st Class, Nawada in Complaint Case No. 255 of 2012 summoning the petitioners as accused is hereby set aside resulting into dismissal of the said complaint.

(Ashwani Kumar Singh, J)

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