

**IN THE HIGH COURT OF JUDICATURE AT PATNA**

**Criminal Miscellaneous No.19864 of 2015**

Arising Out of Case No. -1193 Year- 2010 Thana -BUXAR COMPLAINT CASE District-  
BUXAR

- =====
1. Seema Devi, wife of Sushil Kumar Verma, daughter of Birendra Verma.
  2. Urmila Devi, wife of Birendra Verma.
  3. Birendra Verma, son of Sri Godan Verma.
  4. Raju Verma, son of Sri Birendra Verma.

All are residents of village- Akaura, P.S.- Piro, District- Bhojpur.

.... .... Petitioners

Versus

1. The State of Bihar.
2. Sushil Kumar Verma, son of Sri Dhurandhar Verma, resident of village & P.O.-  
Gangauli, P.S. Simri, District- Buxar.

.... .... Opposite Parties

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**Appearance :**

For the Petitioner/s : Mr. Raj Nandan Prasad, Advocate  
Mr. Brajesh Gupta, Advocate  
For the Opposite Party/s : Ms. Veena Rani Prasad, APP

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**CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH**

ORAL JUDGMENT

**Date: 02-07-2015**

This application under Section 482 of the Code of Criminal Procedure is directed against the order dated 15.03.2014 passed by learned Judicial magistrate-1<sup>st</sup> Class, Buxar in Complaint Case No. 1193(C) of 2010 whereby and whereunder after taking cognizance of the offence punishable under Section 380 read with

34 of the Indian Penal Code, the petitioners have been summoned to face trial.

2. As per complaint petition, story in brief is that on 27.10.2010 accused persons named in the complaint came at the house of the complainant. They took dinner and at about 10 p.m. went to sleep. In the night accused persons fastened mother of the complainant with bed and hushed cloths in her mouth and taken away ornaments, utensils etc. worth Rs. 1,75,000/-.

3. The complainant supported the allegations made in the complaint in his statement made on oath. In course of enquiry certain witnesses were examined in support of the complaint whereafter the impugned order dated 15.03.2014 was passed by the learned Magistrate.

4. Petitioner no. 1 Seema Devi is wife of the complainant, whereas petitioner nos. 2, 3 and 4 namely, Urmila Devi, Birendra Verma and Raju Verma are related as mother-in-law, father-in-law and brother-in-law of the complainant respectively.

5. It has been contended that the petitioners had no knowledge about the institution of the complaint as no such occurrence had ever taken place. The complaint was filed in a planned manner. Petitioner no. 1 Seema Devi was married to the complainant on 20<sup>th</sup> May, 2009. When she was living in her



matrimonial home, the complainant and his family members subjected her to cruelty in various ways. They were repeatedly making demand of a Hero Honda motorcycle, Colour T.V., freeze, etc. from the complainant. The complainant and her parents tried their level best to persuade the complainant and his family members not to humiliate and harass petitioner Seema Devi in her matrimonial home. But all efforts in this regard went in vein and ultimately, seeing no way out said Seema Devi had to file Complaint Case No. 739(C) of 2012 in the court of the learned Chief Judicial Magistrate, Bhojpur at Ara on 09.05.2012 in which cognizance was taken against the complainant and others under Section 498-A of the Indian Penal Code and Section 4 of the Dowry Prohibition Act. It is only after the aforesaid complaint was filed in which cognizance was taken against the complainant and his family members he proceeded ahead with the present complaint which was filed in 2010 and after examination of certain witnesses the impugned order dated 15.03.2014 by which the petitioners have summoned was passed.

6. It has been contended that the allegations made in the complaint are absurd and inherently improbable. It is beyond imagination that the wife, mother-in-law, father-in-law and brother-in-law of the complainant would conspire together and commit theft

in his house. No parents would like to ruin the matrimonial life of their own daughter.

7. Learned counsel for the petitioners has submitted that the instant complaint is manifestly attended with mala fide due to private and personal grudge.

8. The order dated 4.2.2015 passed by a Bench of this Court in Cr. Misc. No. 38078 of 2013 has been brought to my notice. By the said order, the application filed by the complainant opposite party no. 2 under section 482 of the Code for quashing the aforementioned Complaint Case No. 739(C) of 2012 was disposed of in the following terms:-

“As agreed between the parties the Petitioner has deposited a sum of Rs. 2,00,000/- (Two Lakhs) in the Court below which is evident from the order-sheet and was depositing Rs. 500/- per month in favour of the complainant. The photo-copy of the order-sheet be kept on record.

Considering that now the dispute has been finally resolved, it would be in the interest of the parties that further proceeding of Complaint Case No. 739(C) of 2012 (Tr. No. 3579 of 2012) pending before the Sub-divisional Judicial Magistrate, Bhojpur at Ara be dropped.”

9. It has been contended that though a settlement was arrived at between the parties when the aforesaid application of the

complainant was being considered by a Bench of this Court in Cr. Misc. No. 38078 of 2013 and the parties had agreed to settle all the cases going on between them but after the aforesaid Complaint Case No. 739(C) of 2012 was ordered to be dropped the complainant did not turn up to file a compromise petition in the present complaint.

10. Despite valid service of notice, the opposite party no. 2 has chosen not to appear in the present case. None appears on behalf of the State even.

11. I have heard learned counsel for the petitioners and perused the record.

12. Apparently, in the background of the facts mentioned above, I am of the opinion that the allegations made in the complaint petition are inherently improbable and absurd. The ongoing matrimonial discord and dispute seems to be the reason behind the filing of a malicious complaint. Further, the order dated 4.2.2015 passed in Cr. Misc. No. 38078 of 2013 gives an impression that this Court had dropped the proceedings of the case instituted against the opposite party no. 2 by the opposite party no. 1 Seema Devi considering the fact that the dispute between the parties had finally been resolved. On the facts and in the circumstances of the present case allowing the proceedings to continue would be an abuse of the process of court.

13. In **State of Haryana Vs. Bhajan Lal** reported in **(1992) Supp. 1 SCC 335**, the Supreme Court has laid down the principles on which the court can quash the proceeding under Section 482 of the Code of Criminal Procedure. These are as follows:-

- (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.
- (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.”

14. The present case would fall within category (5) and (7) of the principles laid down by the Supreme Court in State of Haryana v. Bhajan Lal (supra).

15. In that view of the matter, the impugned order dated 15.03.2014 passed by learned Judicial Magistrate-1<sup>st</sup> Class, Buxar in Complaint Case No. 1193(C) of 2010 is quashed. Consequently, the Complaint Case No. 1193(C) of 2010 and all the proceedings emanating therefrom are also quashed.

**(Ashwani Kumar Singh, J.)**

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