

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.18964 of 2015

Arising Out of PS.Case No. -94 Year- 2014 Thana -NALANDA COMPLAINT CASE District-
NALANDA (BIHARSHARIFF)

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1. Rita Devi wife of Rajkumar Yadav D/o Hawaldar Yadav
 2. Awadhesh Yadav Son of Hawaldar Yadav
 3. Uday Yadav Son of Hawaldar Yadav
 4. Silam Devi wife of Uday Yadav
 5. Gita Devi wife of Awadhesh Yadav All residents of village - Malawan, P.S. - Sare, Dist - Nalanda.

.... Petitioner/s

Versus

1. The State of Bihar.
2. Kaushilya Devi wife of Kali Yadav resident of Village - Konand, P.S. - Asthawan, Dist - Nalanda.

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Sudish Kumar, Adv.
For the Opposite Party/s : Mr. Rajesh Kumar Chaudhary

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 29-06-2015

This application under section 482 of the Code of Criminal Procedure (for short 'the Code') is directed against the order dated 22.05.2014 passed by the learned Sub Divisional Judicial Magistrate, Nalanda at Biharsharif in Complaint Case No. 94(C) of 2014, whereby finding a prima facie case to be made out for the offences under sections 403 and 323 of the Indian Penal Code, the petitioners have been summoned to face trial.

2. According to the complainant (Opposite Party No.2), on 27.01.2014 at about 12.00 noon when she had gone to have a bath in the Brahmkund at Rajgir, the accused persons had also accompanied



her. Firstly, they took bath in the Brahmkund, and when they came out the complainant and the witnesses proceeded to have a bath after keeping their clothes, cash and Jhola at the ghat. At that time petitioner nos.1 and 4 Rita Devi and Silam Devi said that there is huge crowd and they should hand over their ornaments before entering into the Brahmkund. The other accused persons also said the complainant the same thing. Acting on the advice of the accused, the complainant handed over all her belongings including her gold chain and earring to petitioner no.1 before taking bath. When she came out, the accused persons were not seen near the Brahmkund. She made a search for them but they were not seen anywhere near the Brahmkund. In the evening the complainant went to the house of the accused persons and requested them to return her ornaments but they refused to return the same. They are also alleged to have abused and assaulted her. It has been stated that the complainant went to the Asthawan Police Station on 27.01.2014 itself, but the S.H.O. of Asthawan Police Station asked her to lodge the FIR at Rajgir Police Station. Thereafter, she went to Rajgir Police Station and informed about the occurrence but no action was taken by the police and as such, the complaint case was filed on 29.01.2014 in the court.

3. On 03.02.2014 the statement of the complainant was recorded on oath. In her statement, she has stated that the alleged



occurrence took place at about 8-9 a.m. She had gone together with the accused persons to have a bath in the Brahmkund at Rajgir. When she was proceeding towards the Brahmkund, the accused persons convinced her to keep her belongings in their custody. She acted on their advice and gave her ornaments to petitioner no.1 and after she came out of the Brahmkund, they were not found near the Brahmkund. When she went to their house in order to make enquiry, she was abused and assaulted. Further, petitioner no.1 refused to return her ornaments and other belongings. In reply to the court question, the complainant has stated that the accused persons are her co-villagers.

4. Learned counsel for the petitioners has submitted that the present case has been lodged in retaliation to the Complaint Case No.253(C) of 2013 instituted by the petitioner no.1 Rita Devi against the complainant Kaushalya Devi, her husband Kali Yadav and her son Raj Kumar Yadav. He has submitted that the petitioners are resident of village Malwan, P.S. Sare, District- Nalanda, whereas the complainant is the resident of village Konand, P.S. Ashthawan, District- Nalanda. Petitioner no.1 Rita Devi was married to the son of the complainant Raj Kumar Yadav in the year 2002. Since the date of marriage, she was being subjected to cruelty at the hands of her husband and in-laws and ultimately on 24.02.2013 she was ousted



from her matrimonial home. In view of the atrocities committed upon petitioner no.1, she had instituted the aforesaid Complaint Case No.253(C) of 2013 against the complainant and others on 04.03.2013. Petitioner no.2 Awadhesh Yadav and petitioner no.3 Uday Yadav are brothers of petitioner no.1 and petitioner no.4 Silam Devi and petitioner no.5 Gita Devi are her 'Bhabhis' (sister-in-laws). It has been contended that the complainant has deliberately suppressed her relation with the petitioners and in reply to the court question, she has made a false statement by saying that the petitioner are her co-villagers.

5. Learned counsel for the opposite party no.2 has contested the matter. He has submitted that the complainant has supported the allegations made in the complaint petition in her statement made on oath and the other witnesses examined in course of enquiry have also supported the allegations. He does not deny the fact that the petitioner no.1 was married to the son of the complainant. However, he contends that simply because petitioner no.1 had instituted a complaint case at an earlier point of time, the case instituted by the opposite party no.2 cannot be disbelieved. According to him there is no error in the summoning order passed by the learned Sub Divisional Judicial Magistrate, Nalanda.

6. I have heard the respective counsel for the parties and

perused the record.

7. I find substance in the arguments advanced on behalf of the petitioners. Apparently, the present case has been instituted after eight months of institution of the aforesaid Complaint Case No.253(C) of 2013 in which the complainant of the present case, her husband and her son have been made accused. The complainant has deliberately tried to suppress the existing relation of the petitioners with the accused petitioners in her complaint as well as in her statement made on oath before the court. She has tried to show that they are her co-villagers, whereas the fact of the matter is that the petitioners are resident of a different village. Further, according to the complaint petition, the alleged occurrence took place on 27.01.2014 at 12 noon but only after a few days when the complainant was examined on oath, she has disclosed that the alleged occurrence took place at about 8-9 a.m. Having regard to the facts and circumstances of the case, I am of the opinion that the present criminal proceeding is manifestly attended with malafide for wreaking vengeance on the petitioners and with a view to spite them due to private and personal grudge.

8. It is well settled that in exercise of powers conferred under Sections 482 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.

9. The ambit and scope of exercise of powers under section 482 of the Code has been explained by the Supreme Court in several judgments.

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.”

10. The instant case comes within the purview of the clauses (5) and (7) of the aforesaid judgment of the Supreme Court.

11. In view of the discussions made hereinabove, the application is allowed. The impugned order dated 22.05.2014 passed by the learned Sub Divisional Judicial Magistrate, Nalanda at Bihar Sharif in Complaint Case No. 94(C) of 2014 is hereby set aside resulting into dismissal of the said complaint.

(Ashwani Kumar Singh, J)

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