

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.42518 of 2012

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1. Baban Singh S/O Kedar Singh Resident Of Village- Jaitpur, P.S.-
Barahiya, District- Lakhisarai

.... Petitioner/s

Versus

1. The State Of Bihar
2. Prabha Devi, D/o Late Ram Swaroop Singh, resident of village-Chetan
Tola Kotha, P.S. Barahiya, District-Lakhisarai

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Parmanand Pd. Nr. Sahi

For the Opposite Party/s : Mr. Ahmad Ali(App)

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CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR SAHOO
ORAL ORDER

2 13-03-2015

Heard the learned counsel, Mr. Pramod Kumar Singh

on behalf of the petitioner.

Nobody appeared on behalf of the State.

This Criminal Miscellaneous application has been filed under Section 482 of the Code of Criminal Procedure for quashing the order dated 29.02.2012 passed in Complaint Case No.448(c) of 2010 whereby the learned S.D.J.M., Lakhisarai has taken cognizance under Section 498A of the Indian Penal Code against the petitioner-husband and other in-laws mentioned in the impugned order.

The learned counsel for the petitioner submitted that earlier the brother of the complainant had lodged F.I.R. alleging that the petitioner and his parents and brother had killed the present complainant. Subsequently, the present complainant



appeared before the Court and gave statement to the effect that she is residing with her husband cordially. Accordingly, the police submitted final form which was accepted. Thereafter, a complaint case was filed against the informant i.e. the brother of the present complainant for being lodging the false F.I.R. which is still pending. Thereafter, the present complainant filed the Complaint Case No.409(c) of 2009 which was registered as Barahiya P.S. Case No.133 of 2009 wherein final form was submitted. The wife of the present petitioner filed a protest-cum-complaint petition on 26.10.2009. The court below after examining the witnesses under Section 202 Cr.P.C. by order dated 15.12.2010 dismissed the complaint case under Section 203 Cr.P.C.. Against the said order dismissing the complaint case, the wife of the petitioner filed Cr. Revision No.76 of 2011 before the District Judge which was ultimately allowed on 29.11.2011 and the matter was remitted back to the court below for passing a fresh order according to law. On the basis of these facts, it can be said that the parties are fighting litigation for last seven years and in fact, a false case has been lodged against the petitioner and his relations. According to the learned counsel, if the order taking cognizance is allowed, it will be abuse of the process of the Court and, therefore, the impugned order be set aside and the complaint case be dismissed.

Protest-cum-complaint case filed by the present



petitioner has been annexed as Annexure 6 to the application. Perused the Protest-cum-complaint application and order whereby cognizance has been taken by the court below i.e. the impugned order. The order passed by the Additional District and Sessions Judge in Cr. Revision No.76 of 2011 has also been annexed as Annexure 8 to this application. Perused the said order also.

According to the learned counsel, earlier false case was even lodged by the brother of the complainant to the extent that the wife has been killed by the petitioner and his relation which was found to be false. So far this submission is concerned, it may be mentioned here that it has got no relation with the present order whereby on the basis of the complaint filed by the wife, cognizance under Section 498A has been taken. From perusal of the complaint application, Annexure 6, it cannot be said that no prima facie case is made out.

Hon'ble Supreme Court in the case of **Kurukshetra University and another v. State of Haryana and another, A.I.R. 1977 Supreme Court 2229** has held that inherent powers do not confer an arbitrary jurisdiction on the High Court to act according to whim or caprice. That statutory power has to be exercised sparingly with circumspection.

It is well settled principles of law, as has been held by the Hon'ble Supreme Court in the case of **R. P. Kapur v. State of**



Punjab, A.I.R. 1960 Supreme Court 866 that “the inherent power of the High Court under Section 482 Cr.P.C. cannot be exercised in regard to matters specifically covered by the other provisions of the Code. The inherent jurisdiction of the High Court can be exercised to quash proceedings in a proper case either to prevent the abuse of the process of any court or otherwise to secure the ends of justice. Ordinarily criminal proceedings instituted against an accused person must be tried under the provisions of the Code, and the High Court would be reluctant to interfere with the said proceedings at an interlocutory stage. It is not possible, desirable or expedient to lay down any inflexible rule which would govern the exercise of this inherent jurisdiction.”

The Supreme Court further clarified that the inherent jurisdiction can be exercised “where it manifestly appears that there is a legal bar against the institution or continuance of the criminal proceeding in respect of the offence alleged. Absence of the requisite sanction may, for instance, furnish cases under this category. Where the allegations in the First Information Report or the complaint, even if they are taken at their face value and accepted in their entirety, do not constitute the offence alleged; in such cases no question of appreciating evidence arises; it is a matter merely of looking at the complaint or the First Information Report to decide whether the offence alleged is disclosed or not.

Where the allegations made against the accused person do constitute an offence alleged but there is either no legal evidence adduced in support of the case or the evidence adduced clearly or manifestly fails to prove the charge. In dealing with this class of cases it is important to bear in mind the distinction between a case where there is no legal evidence or where there is evidence which is manifestly and clearly inconsistent.” This view has been consistently followed subsequently by various Supreme Court decisions.

In the present case, therefore, on the basis of the fact that once upon a time a false case was lodged by brother of the complainant, the present cognizance order, which was taken under Section 498A against the petitioner and his relation at the instance of the wife herself, cannot be quashed.

In view of my above discussion, I find no merit in this Criminal Miscellaneous case and accordingly, this Criminal Miscellaneous case is dismissed.

(Mungeshwar Sahoo, J)

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