

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.23896 of 2012

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1. MD. SAHABUDIN @ SAHAB S/O LATE MD. ABID HUSSAIN
 2. MD. ISHAQ S/O MD. KASIM MIA
 3. MD. PERBEZ ALAM S/O MD. AKALU MIAN @ MD. SALAUMUDIN
 4. MD. REYAZUDIN S/O MD. ABIND
 5. SONY KHATON W/O RIJWAN
 6. JARINA KHATON W/O LATE ABIND
 7. MD. TABREJ S/O AKLU MIAN
 8. MD. NAZIR S/O MD. FAKRUDIN RESIDENT OF VILLAGE- ANSHAN NAGAR, P.S.- BUNDET KHAND, DISTRICT- NAWADA.
- PETITIONER/S

VERSUS

- 1) THE STATE OF BIHAR
 - 2) MD. AKBAR S/O MD. AUB R/O VILLAGE- KHANKAH, MAKHDUMBAG, P.S.- LAHERI, DISTRICT- NALANDA.
- OPPOSITE PARTY/S

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Appearance:

For the Petitioner/s : Mr. Vishwa Ranjan Chaudhary, Adv.
For the O.P. No.2 : Mr. Rana Baljit Singh, Adv.

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI
ORAL ORDER

3 20-02-2015 Heard learned counsel for the petitioners as well as learned Additional Public Prosecutor.

None appears on behalf of Opposite Party No.2 although there happens to be appearance.

Petitioners are none other than the brother, mother and other family members of daughter-in-law of complainant Md. Akbar, Opposite Party No.2 and from the compliant petition itself there happens to be disclosure regarding marital discord amongst the spouses. Though, the case instituted by son of Opposite Party No.2, namely, Md. Yusuf has been disclosed however complaint petition no.1155 of 2009 filed by Sultana Perween the daughter-in-law of

Opposite Party No.2 has been made Annexure-2 as well as order of anticipatory bail dated 30.07.2010 in connection with Annexure-2, is Annexure-3.

It has been alleged in the complaint petition (Annexure-1) that in the background of marital discord amongst the spouses, Sultana Perween is residing at her Naihar. On 09-02-2010 Sultana Perween had appeared before the Family Court, Biharsharif where she declined to reside with her husband Md. Yusuf. It has further been disclosed that on 09.02.2010 itself at about 4-5 P.M. all the accused persons so named including the female members raided his house, abused, assaulted with fist and slap and took out away Rs.20,000/-, briefcase, coat-pant. They have further threatened that in case he intends to institute any sort of legal prosecution, he will be given a lesson.

It has been submitted on behalf of petitioners that occurrence happens to be improbable in the background of the fact that the Opposite Party No.2 is the resident of Khankah, Makhdumbag, Police Station-Laheri, District-Nalanda while petitioners are resident of village-Parha Rahimabad, Police Station-Akbarpur, District-Nawada as well as Anshan Nagar, P.S.-Bundet Khand, certainly away from complainant's place. In the background of pendency of criminal prosecution launched at the behest of Sultana Perween as well as having presence of Sultana Perween before the Family Court rules out possibility of such kind of activity as, presence of her family members was expected at Biharsharif, before the Family Court.

Therefore, the improbability of the prosecution case did not justify the order of cognizance.

It has further been submitted that from the complaint petition itself, it is apparent that after the occurrence the complainant had raised alarm attracting the witnesses who have seen the accused persons leaving therefrom along with articles however; the witnesses have stated (Annexure-7) that they have seen the occurrence being committed by the accused persons and that inconsistency happens to be on account of falsity of the prosecution case.

On the other hand, the learned Additional Public Prosecutor opposed the prayer and submitted that for the present purpose prima facie case is to be seen.

In ***State of Hariyana & Ors. Versus Bhajan Lal & Ors.*** reported in ***AIR 1992 SC 604*** the Hon'ble Apex Court has identified following categories including others wherein prosecution can be quashed and those are :-

“(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 FIR 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 FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, on 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 grounds for proceedings 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 proceedings 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 malafide 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.”

Taking into account, the totality of the event incorporated in complaint petition speaks a lot and appears to be malafide in the background of levity in the allegation coupled with improbability as well as suggest cause of

vengeance on account of pendency of case brought up at the behest of Sultana Praveen. There happens to be settled judicial predicant that judicial process should not be an instrument of oppression or needless harassment. The court should be circumspect and judicious in exercising discretion and should take all the relevant facts and circumstances into consideration before issuing process lest it would be an instrument in the hands of private complainant as vendetta to harass the persons needlessly.

And on account thereof, the order impugned dated 09.12.2010 passed by Smt. Rachana Srivastava, Judicial Magistrate, 1st Class, Biharsharif in Complaint Case No.126(C) of 2010 is set aside. Petition is allowed.

(Aditya Kumar Trivedi, J.)

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