

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.8742 of 2016

Arising Out of PS.Case No. -705 Year- 2015 Thana -MUZFFARPUR COMPLAINT CASE District-
MUZAFFARPUR

- =====
1. Ashish Kumar Ranjan @ Ashish Ranjan Son of lakshman Ray
 2. Vikash Kumar Ranjan@Vikash Ranjan son of lakshman Ray
 3. Manjusha Devi@Manjusha Kumari D/o Lakshman Ray
 4. lakshman Ray S/o late Lok Nath Ray
 5. Geeta Devi W/o Lakshman Ray
- All resident of Block Colony, PO Hajipur P.s Sadar District Vaishali.

.... Petitioner/s

Versus

1. The State of Bihar.
2. Jagdeep Ray S/o late Sahdev Ray Resident of Village -Anand nagar,
Gobar Sahi P.s Sadar District Muzaffapur.

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Ashhar Mustafa, Adv.
For the State : Mr. Yogendra Kumar, APP
For the O.P. No.2 : Ms. Kumari Sujata Sinha, Adv.

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CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY
ORAL ORDER

3 08-09-2016 Heard learned counsel for the petitioner and counsel
for the State as also counsel for the opposite party no.2.

In this case, the petitioner is challenging order taking cognizance dated 8.7.2015 passed by Judicial Magistrate, 1st Class, Muzaffarpur whereby cognizance has been taken for offences punishable under Sections 147, 323, 380, 504 of the Indian Penal Code.

A complaint was filed by one Jagdip Rai which was instituted as Complaint Case No. 705 of 2015 making an allegation against all the accused persons, who are petitioners



herein, have entered into the house forcibly and started assaulting to the inmates and demanded money as they have incurred huge amount in pursuing the litigation. It has been alleged that they have assaulted Shila Devi and Rani Kumari. When Lal Babu Rai came forward for defending them, he was also assaulted mercilessly. The accused persons also used vulgar abuses. Further allegation has been made that the accused persons took away Rs. 1,00,000/- including golden ornaments.

Learned counsel for the petitioners has submitted that the present petition is a retaliation of the case filed by the petitioner no.3 who happens to be the Bahu of the present Complainant, opposite party no.2. His son, namely, Vishal Kumar entered into the marriage with opposite party no.3, they did not keep her in a proper manner though cash amount of money including valuables was given to them at the time of marriage. He has further alleged that her husband has allegedly established illegitimate relationship with a girl working in the Chola Manglam Financer Company, Chakkar Maidan and an allegation has been made that they have tortured her physically as well as mentally and forcibly kicked her out from the house.

Learned counsel for the petitioners has further submitted that the present case is a counter blast or it has been



filed to teach a lesson to these petitioners for filing the case under Section 498A of the I.P.C. and basically it is a malicious prosecution falling within the parameter set out in the judgment in the case of *State of Haryana & Ors. Vs. Ch. Bhajan Lal & Ors.* reported in *AIR 1992 SC 604* and one of the ground that has been there is that if the prosecution is malicious and it has been lodged out of vengeance, in that circumstances, the court should proceed to protect the citizen from unnecessary harassment from the criminal proceeding. It is relevant to quote paragraph no.108 of the said judgment which reads as follows:-

"105. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers Under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any Court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases

wherein such power should be exercised.

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."

It appears that the present case has been filed by the opposite party no.2 with a purpose of teaching a lesson to these petitioners as the petitioner no.3 had earlier filed a First Information Report against her-in-laws including the opposite party no.2 which itself discloses the mindset of the opposite party no.2. In the entire complaint petition, only a vague statement has been made without any detail of the fact about who has done what and vis-à-vis especially with regard to female accused persons. It gives a strong indication that the prosecution has been lodged with a

malafide intention and out of vengeance. If this case is allowed to continue, it would be nothing but an abuse of the process of the Court.

Accordingly, the order taking cognizance dated 8.7.2015 passed in Trial No. 626 of 2015 arising out of Complaint Case No. 705 of 2015 is quashed.

(Shivaji Pandey, J)

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