

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.23104 of 2013

Arising Out of PS.Case No. -1085 Year- 2012 Thana -COMPLAINT CASE District- ARRARIA

1. Shashi Nath Mishra @ Shashi Kant Mishra son of Sri Dharmnath Mishra
2. Renu Mishra wife of Sri Shashi Nath Mishra
Both Resident Of Village- Bhadreshwar Ward No. 3, P.S- Jogbani, District- Araria

.... Petitioner/s

Versus

1. The State Of Bihar
2. Gyan Mishra son of Sri Arun Kumar Mishra Resident Of Village- Farbisganj,
P.S- Farbisganj, District- Araria.

.... Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Ajay Thakur

For the Opposite Party/s : Mr. Madan Kumar, A.P.P.
Mr. Anil Kumar Mishra,

CORAM: HONOURABLE MR. JUSTICE RAKESH KUMAR

ORAL JUDGMENT

Date: 19-09-2016

Heard Sri Ajay Thakur, learned counsel who was assisted by Sri Md. Imtiyaz Ahmad, learned counsel for the petitioners, Sri Madan Kumar, learned Additional Public Prosecutor as well as Sri Anil Kumar Mishra, learned counsel for the complainant/ opposite party no. 2.

It is a peculiar case in which the husband/ opposite party no. 2 who was made accused in Jogbani Rail P.S. Case No. 9 of



2011 registered on the basis of information given by the petitioner no. 1/ father of the deceased for offence under Section 498(A), 304(B), 120(B), 201/ 34 of the Indian Penal Code, the father of the deceased and his wife were made accused much belatedly in a complaint case which was filed by the opposite party no. 2. The petitioners have invoked inherent jurisdiction of this Court under Section 482 of the Code of Criminal Procedure, 1973 with a prayer to quash an order dated 11.9.2012 passed by learned Judicial Magistrate 1st Class, Araria in Complaint Case No. 1085 of 2012. By the said order the learned Magistrate has taken cognizance of offence under Section 306 and 313 of the Indian Penal Code and directed for issuance of processes against the accused persons.

Short fact of the case in the present case is that the opposite party no. 2 had filed a complaint in the court of learned Chief Judicial Magistrate, Araria, which was registered as Complaint Case No. 1085 of 2012 in which both the petitioners were arrayed as accused. The complainant had alleged commission of offence under Section 306, 313 and 120 of the Indian Penal Code against the petitioners for creating a situation to commit suicide by their daughter, who was wife of complainant /opposite party no. 2. It was also alleged that forcibly the petitioners had taken steps for abortion after knowing that the wife of the complainant was carrying foetus of



about 5 months. As per complaint case the complainant had solemnized marriage with Divya Bharti @ Sweety / daughter of petitioners on 5/12/2010 with their free will. Since marriage was solemnized without the consent of parent of complainant's wife, the parents i.e. the accused persons had not taken the marriage in good taste. It was alleged that in view of wed lock his wife Divya Bharti had conceived and she was carrying a foetus of about 5 months. Thereafter, she went to her parents house. It was disclosed in the complaint petition that parents forcibly conducted abortion which was not appreciated by the wife of the complainant and finally the petitioners created a situation which compelled the wife of the complainant to commit suicide and she committed suicide by way of laying her head on railway track. After filing complaint enquiry was conducted and thereafter the impugned order of cognizance was passed by the learned Magistrate which has been assailed in the present case.

Sri Ajay Thakur, learned counsel for the petitioners at the very outset has argued that the present complaint was filed by the complainant /opposite party no. 2 only with a view to create his defence as well as to frustrate the criminal case which was initiated against him. By way of referring to Annexure – 2 to the present petition learned counsel for the petitioners submits that in the year



2011 itself on the basis of information given by the petitioner no. 1 an F.I.R. vide Jogbani Rail P.S. Case No. 9 of 2011 was registered for offences under section 498(A), 304(B), 120(B) , 201/34 of the Indian Penal Code and Section 3 and 4 of Dowry Prohibition Act. In the said case the complainant of the present case was arrayed as accused no. 1 and his father and mother both were arrayed as accused no. 2 and 3. He submits that in the said case after thorough investigation charge sheet was submitted vide Charge Sheet No. 16 of 2011 dated 31/8/2011 and thereafter cognizance order was passed. The case was committed to the court of sessions and thereafter, trial in the case has already commenced and witnesses had been examined. He submits that after much belated stage the present complaint was filed by the opposite party no. 2 which was filed on 20/4/2012 whereas, in the case in which complainant was arrayed as accused, he was charge sheeted on 31/8/2011. He further submits that as per F.I.R. of Jogbani Rail P.S. Case No. 9 of 2011 it was categorically disclosed by the informant, who is petitioner in the present case that before the death of his daughter the complainant of the present case had taken away the daughter of the petitioners on a motorcycle and thereafter the petitioners knew about the recovery of dead body of the petitioners' daughter on railway track. In sum and substance it has been argued that the present complaint was filed

only and only with a view to create a defence or frustrate the trial in which complainant /opposite party no. 2 is facing trial.

Learned Additional Public Prosecutor as well as Sri Anil Kumar Mishra, learned counsel for the complainant /opposite party no. 2 have opposed the prayer made by the petitioners in the present case. It was argued by Sri Mishra that the petitioners were influential persons and due to their influence police had not conducted fair investigation. He submits that at the time of conducting post mortem examination on the person of the deceased even doctor had not conducted proper examination. He submits that in post -mortem examination report of- course it was indicated that the deceased was pregnant but nothing was indicated about the age or period of the foetus. According to Sri Mishra it was petitioners who had created a situation to commit suicide by the wife of the complainant. He further submits that during enquiry in the complaint case witnesses have supported the case and thereafter order of cognizance was passed.

Besides hearing learned counsel for the parties I have also perused the materials available on record. Learned counsel for the complainant /opposite party no. 2 has not disputed that complainant is an accused in Jogbani Rail P.S. Case No. 9 of 2011 which is in relation to death of his wife or daughter of petitioners. He has also



not disputed that before the court below witnesses in Sessions Trial arising out of Jogbani Rail P.S. Case No. 9 of 2011 are being examined in which the complainant is an accused. After going through the entire complaint petition as well as examining the F.I.R. in Jogbani Rail P.S. Case No. 9 of 2011, prima facie the Court is satisfied that the present complaint was filed with a view to create a defence. It is evident that death of wife of the complainant, who was daughter of petitioners had occurred in between 28/29-5-2011 whereas, the present complaint was filed on 20/4/2012. At this point Sri Mishra , learned counsel for the complainant submits that delay in lodging complaint has occurred due to the reason that the complainant was initially arrested in Jogbani Rail P.S. Case No. 9 of 2011 and only after he was released from custody he had filed the present complaint petition. However, once in relation to death of daughter of the petitioners, who was wife of complainant/ opposite party no. 2 the case was thoroughly investigated by the statutory investigating agency and in the said investigation the accusation against the complainant of the present case and others was found true, certainly at subsequent stage there was no reason to entertain the complaint petition which was filed by the opposite party no. 2. In view of the facts and circumstances the Court is of the considered opinion that allowing proceeding in the Complaint Case No. 1085 of

2012 , will amount to allowing abuse of the process of the court and as such the order of cognizance dated 11.9.2012 is liable to be set aside which is hereby set aside.

The petition stands allowed.

(Rakesh Kumar, J)

Praful/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	22-09-2016
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