

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.13938 of 2014

Arising Out of P.S.Case No. -990 Year- 2006 Thana -GAYA COMPLAINT CASE District- GAYA

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1. Naima Ara Wife Of Md. Shamsh Alam, Daughter of Md. Safique Alam @ Shafique.
 2. Md. Safique Alam @ Shafiquer Son of Md. Hussain
 3. Afroz Jahan Ara @ Afroz Jahan Wife of Md. Safique Alam @ Shafique
 4. Md. Akhtar @ Akhtar Alam Son Of Md. Hussain
 5. Md. Alisher @ Alisher Son of Md. Hussain
 6. Soni @ Nasima Ara Daughter of Md. Safique Alam @ Shafique
 7. Maqsood Alam Son of Md. Safique Alam @ Shafique.
 8. Shibhu @ Mahboob Alam Son Of Md. Safique Alam @ Shafique All Resident Of Village- Mahuli, Police Station- Duddhi, District- Sonbhadra.
 9. Noor Jahan Khatoon Wife of Akhtar Abbas, Resident of Village- Duddhi, Police Station- Duddhi, District- Sonbhadra.
 10. Md. Zubair Alam @ Zubair Alam Son Of Late Ummat Rasool Resident of Fivestar Vastralaya, Dumaria, Police Station- Dumaria, District- Gaya
 11. Md. Sabir @ Sabir Alam Son of Md. Ummat Rasool
 12. Md. Manzoor Alam @ Manzoor Alam Son of Late Ummat Rasool Both Resident of Village- Manjhooli, Police Station- Dumaria, District- Gaya.

.... Petitioners

Versus

1. The State of Bihar
2. Md. Kalim, son of late Abdul Karim, resident of Mohalla-Makhlotganj, Marufganj, Police Station-Kotwali, District-Gaya

.... Opposite Parties

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Appearance :

For the Petitioners	:	Mr. S.A.Nasim, Advocate
For the Opposite Party No.2	:	Mr. Anisur Rahman, Advocate
For the State	:	Mr. Shantanu Kumar, APP

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CORAM: HONOURABLE MR. JUSTICE SANJAY KUMAR

ORAL JUDGMENT

Date: 18-09-2017

This criminal miscellaneous application under Section 482 of the Cr.P.C. has been filed to quash the order dated 04.01.2007 passed in Complaint Case No.990 of 2006 passed by Judicial Magistrate, Ist Class, Gaya whereby and whereunder the learned



Magistrate took cognizance against the petitioners for the offence under Sections 147, 323, 452, 504 and 380 of the IPC.

2. Heard learned counsel for the petitioners, learned counsel for the Opposite Party No.2 as well as learned APP for the State.

3. The Opposite Party No.2 is father-in-law of petitioner no.1. The remaining petitioners are parents, uncle, aunt, brothers and sisters of the petitioner no.1. The father-in-law has filed this complaint case after filing of the complaint petition of petitioner no.1 for the offence under Sections 498A and 406 of the IPC and Section 3/4 of the Dowry Prohibition Act. The petitioner no.1 was married with the son of Opposite Party No.2 on 17.10.2003 and after marriage petitioner no.1 started residing at Patna along with her husband. It has been alleged the son of complainant was made traceless by his wife as he could not find his son with the petitioner no.1 at Patna whenever he visited after 2005. The allegation of making the son of Opposite Party No.2 traceless and allegation of demand of Rs.50,000/- has been disbelieved by the court below and the Magistrate took cognizance only for the offence under Sections 147, 323, 452, 504 and 380 of the IPC. Out of 12 petitioners, nine are residents of village-Buddhi, District-Sonbhadra (Uttar Pradesh) and Opposite Party No.2 is the resident of Mohalla-Maroofojanj, P.S. Kotwali, District-Gaya. It does not appear probable that 12 persons in a jeep will come from UP to



the residence of complainant (Opposite Party No.2) at Gaya to assault and take away three boxes and other articles. The present complainant case has been filed after two days of the occurrence of alleged assault at Gaya Town and after more than seven months of making the son of complainant traceless from Patna. The petitioner no.1 has filed complaint case against her husband and his family members including the Opposite Party No.2 for torture and assault caused by them in the matrimonial house. The complaint case was lodged for about much earlier, i.e., more than eighteen months of the complaint case of Opposite Party. The allegation of assault and taking away house hold articles appears omnibus.

4. The principles relating to exercise of jurisdiction under section 482 of the Cr.P.C. to quash the complaint and criminal prosecution have been considered by the Apex Court in several decision. In spite of Haryana and others vs. Bhajan Lal and others [1992 Supp (1) SCC 335] certain parameters have been pointed out in paragraph 102 by the Supreme Court under which prosecution launched in a complaint or FIR may be quashed in exercise of jurisdiction under section 482 of the Cr.P.C.. It reads as under:-

“102. 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 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, 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."

5. As discussed above, the Opposite Party No.2 has filed the complaint case after filing of the complaint case of petitioner no.1 against the Opposite Party No.2 and others for the offence under Sections 498A and 406 of the IPC and Sections 3/4 of the Dowry Prohibition Act. The case of Opposite Party No.2 appears absurd and



improbable. The facts of the present case is quite similar to the case decided by the Apex Court in Eicher Tractor Ltd. & Others Vs. Harihar Singh (supra) and also squarely covered by guidelines given at sub-para 5 and 7 of para 102 of the case in State of Haryana and others vs. Bhajan Lal and others.

6. Therefore in view of principles laid down by the Supreme Court as discussed above, the order dated 04.01.2007 passed in Complaint Case No. 990 of 2006 and the criminal prosecution of these petitioners in said case is quashed.

7. This application is, accordingly, allowed.

(Sanjay Kumar, J)

B.Kr./-

AFR/NAFR	NAFR
CAV DATE	
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