

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.8152 of 2012

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Gautam Kumar S/O Sri Mithilesh Prasad Singh R/O Village- Ashma, P.S-
Pakari Barwa, Distt- Nawada

... .. Petitioner

Versus

1. The State of Bihar
2. Sunita Kumari D/O Dinesh Singh R/O Village- Ashma, P.S- Pakari Barwa,
Distt- Nawada

... .. Opposite Parties

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Appearance :

For the Petitioner/s	:	Mr. Rajesh Kumar Sharma, Adv. Mr. Bipin Bihari Singh, Adv.
For the Opposite Party/s :		Mr. Madan Kumar, A.P.P. Mr. Dipak Kumar, Adv.

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CORAM: HONOURABLE MR. JUSTICE RAKESH KUMAR
ORAL JUDGMENT

Date : 07-09-2017

Heard Sri Rajesh Kumar Sharma, learned counsel, assisted
by Sri Bipin Bihari Singh, learned counsel for the petitioner, Sri
Madan Kumar, learned Addl. Public Prosecutor as well as Sri
Dipak Kumar , learned counsel for the complainant/Opp.Party
no.2.

2. The petitioner has approached this Court, invoking its
inherent jurisdiction under Section 482 of the Code of Criminal
Procedure, with a prayer to quash an order dated 21.07.2011
passed by the learned Sub Divisional Judicial Magistrate, Nawada
in Complaint Case No.C962/2010, T.R.No.2032/2011. By the said
order, the learned Magistrate has taken cognizance of offence
under Section 498A of the Indian Penal Code and summoned the
accused persons.



3. Short fact of the case is that Opp.Party no.2 filed a complaint petition on 06.08.2010 in the court of the learned Chief Judicial Magistrate, Nawada, which was numbered as Complaint Case No.C962/2010. In the complaint petition, besides the petitioner other four persons, who were father, mother and cousins of the petitioner, were arrayed as accused. It was alleged that the petitioner had solemnised marriage with Opp.Party no.2 and due to non-fulfilment of demand of dowry, she was being harassed and tortured. In support of the complaint, the complainant examined altogether five witnesses and, thereafter, the learned Magistrate, by the impugned order, took cognizance of offences and directed to summon the accused persons. The said order is under challenge.

4. Learned counsel for the petitioner submits that the entire proceeding is malicious in view of the fact that the marriage of the petitioner with Opp.Party no.2 is under dispute. By way of referring to Annexure-3 to the present petition i.e. copy of the F.I.R. of Narhat P.S. Case No.51/2002 dated 07.06.2002, he submits that the father of the petitioner was informant in the said case, which was registered for the offence under Section 364/34 of the Indian Penal Code. In the said case, father of Opp.Party no.2, namely, Dinesh Singh was one of the F.I.R. named accused, against whom there was allegation that the petitioner was



kidnapped forcibly. He submits that after investigation in Narhat P.S. Case No.51/2002 , the accusation was found true and father of Opp.Party no.2 along with other accused persons were chargesheeted and they were put on trial. Learned counsel for the petitioner has also referred to Annexure-2 to the present petition i.e. copy of the F.I.R. of Deoghar P.S. Case No.262/2010 registered for the offence under Section 498A/323/ 494/34 of the Indian Penal Code and Sections 3 and 4 of the Dowry Prohibition Act, which was filed by Opp.Party no.2 against the petitioner and his other family members. He submits that immediately within one month, the present complaint petition was maliciously filed.

5. In this case, a supplementary affidavit was filed on behalf of the petitioner on 7th March, 2014 and along with supplementary affidavit, the petitioner has brought on record a copy of the Judgment and sentenced passed in G.R.No.734/02, T.R.No.502/12 arising out of Narhat P.S. Case No.51/2002. He submits that after order of cognizance in the present case, by the Judgment of conviction dated 01.10.2013 , father of Opp.Party no.2 along with two others have been held guilty under Sections 363,365/34 of the Indian Penal Code and they have been convicted and sentenced. By way of referring to paragraph-13 of Annexure-1 to the supplementary affidavit i.e. Judgment dated 01.10.2013 passed in



G.R.No.734/02, T.R. No.502/12, learned counsel for the petitioner submits that even during trial, there was denial of marriage of petitioner with Opp.Party no.2. In sum and substance, by way of referring to the Judgment and other facts, it has been argued that since marriage of the petitioner with Opp.Party no.2 is itself in dispute as well as the fact that within one month of lodging earlier F.I.R., the present complaint petition was filed, it is evident that the proceeding has been initiated against the petitioner maliciously and the order impugned is liable to be set aside.

6. Sri Dipak Kumar, learned counsel for Opp.Party no.2 has opposed the prayer of the petitioner and submits that at the stage of cognizance, those materials, which have been referred, may not be looked into. However, he has not raised any dispute regarding Judgment of conviction and sentence i.e. Annexure-1 to the supplementary affidavit.

7. Besides hearing learned counsel for the parties, I have also perused the materials available on record. Normally, the order of cognizance in absence of absurd illegality may not be interfered with. However, if on record, there are certain facts, which suggest that complaint petition has been proceeded maliciously, then in that view of the matter, the order of cognizance may be looked into and interfered with.



8. Considering the fact that in the year 2002 itself, an F.I.R. was lodged by father of the petitioner against the father of Opp.Party no.2 regarding kidnapping of the petitioner and the case has come to the conviction and sentence against father of Opp.Party no.2, certainly in such situation, allowing the proceeding may amount to allowing abuse of the process of the court and, as such, with a view to prevent abuse of the process of the court, it is necessary to interfere with the matter.

9. Accordingly, the order dated 21.07.2011 passed by the learned Sub Divisional Judicial Magistrate, Nawada in Complaint Case No.C962/2010, T.R.No.2032/2011, so far as the petitioner is concerned, is hereby set aside and the petition is allowed.

(Rakesh Kumar, J)

nawalkrs/-

AFR/NAFR	
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