

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.9244 of 2012

Arising Out of PS.Case No. -0 Year- null Thana -null District- NALANDA (BIHARSHARIFF)

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1. Upendra Singh S/O Sabal Singh
 2. Saujanya S/O Upendra Singh
 3. Chaitanya S/O Upendra Singh
 4. Prananiya S/O Upendra Singh

All are Resident Of Village- Babhan Bigha, Police Station- Barbigaha, District-Sheikhpura At Present Old S.B.I. Campus, Bandhgiri, Deepatoli, Bariyatu, Police Station- Bariyatu (Sadar Thana), District- Ranchi (Jharkhand)

.... Petitioner/s

Versus

1. The State Of Bihar
2. Janardan Prasad Singh, S/O Late Ram Prakash Singh, Resident Of Village-Chhachu Bigha, Police Station- Katri Sarai, District- Nalanda.

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Zeyaul Hoda, Adv.

For the Opposite Party/s : Mr. Md.Mustaque Alam, APP

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CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR

ORAL JUDGMENT

Date: 17-05-2017

This petition for quashing has been filed for setting aside the cognizance order dated 14.12.2011 whereby Smt. Rachana Srivastava, Judicial Magistrate-1st Class, Biharsharif, Nalanda after finding the prima facie case under Sections 364 and 511 of the Indian Penal Code has taken cognizance of the offences in connection with Giriya P.S. Case No.115 of 2011, arising out of Complaint Case No. 776C of 2011.

2. The petitioners are accused in Giriya P.S. Case No.115 of 2011. One Janardan Prasad Singh filed a Complaint Case



No.776C of 2011 against the petitioners out of which petitioner no.1 Upendra Singh is father-in-law of his son and rest are other family members. The said complaint was sent by the learned C.J.M., Biharsharif under Section 156(3) Cr.P.C. for registration of a police case and investigation accordingly, Giriyak P.S. case No.115 of 2011 was registered for the offences under Sections 341, 323, 379, 364 and 511/34 of the Indian Penal Code. Allegation in the complaint case is that on 09.05.2005 marriage of Dr. Pankaj Kumar, son of the complainant, was solemnized with Prerna, daughter of Upendra Singh, one of the accused, but after lapse of some time conjugal relationship became strained. Consequently her husband filed a Divorce Suit in Bangalore alleging his wife having illicit affair with another person since before marriage. Prerna also filed a case under Section 498A against her husband and other family members of torturing and pressurizing her to realize more dowry. The specific allegation relating to the present offence is that on 03.07.2011 at 12.00 noon accused persons came by a Bolero vehicle with 3-4 unknown persons and made an attempt to abduct the complainant, but due to intervention of the local persons/people he failed. However, petitioner no.1 Upendra Singh committed theft of Rs.2000/- from the pocket of the complainant.

3. Learned counsel appearing on behalf of the



petitioners submits that Prerna, daughter of Upendra Singh, was married with son of the complainant. Her husband is a doctor practicing in Bangalore and after marriage they started torturing to realize further demand of dowry; for that, she first lodged information before Bangalore police, as she was ousted from matrimonial home filed the police case in Ranchi on 17.05.2011 registered as Ranchi Mahila P.S. Case No.10 of 2011 under Sections 313, 323, 498A/34 of the Indian Penal Code and Section 3/4 of the Dowry Prohibition Act; so in order to take vengeance the present complaint case was filed by one of the accused of the said case, i.e. her father-in-law, on the basis of which police case was lodged against the petitioners.

4. The instant case was filed after lapse of two months when they came to know about filing of Ranchi Mahila P.S. Case No.10 of 2011. Later on, Prerna, the daughter of the petitioner no.1 filed maintenance case also before the Family Court, Ranchi and the said court has passed interim maintenance order of Rs.10,000/- per month, but that too was not being paid by the husband and Divorce Suit is also still pending in the Family Court, Ranchi. There is no allegation of making any attempt of kidnapping of father-in-law of the daughter of petitioner no.1. The police after investigation also not found case true under Sections 364 and 511 of the Indian Penal Code and submitted charge-sheet under Sections 341, 342, 323 and 504/34



of the Indian Penal Code merely on the basis of the statement of the interested witnesses.

5. Learned A.P.P. submits that there is no illegality in the impugned order as prima facie case is made out against the petitioners under Section 511 of the Indian Penal Code.

6. No one appears on behalf of the opposite party no.2, the informant of the case even today, though on the previous date case was adjourned as no one had appeared on his behalf, though the name of the learned counsel is appearing in the cause list.

7. Let us first examine scope of jurisdiction of the High Court in purview of Section 482 of the Cr.P.C. Section 482 of the Cr.P.C. reads as such :

“ Saving of inherent powers of High Court.-
Nothing in this Code shall be deemed to limit or affect the inherent powers of the High Court to make such orders as may be necessary to give effect to any order under this Code, or to prevent abuse of the process of any Court or otherwise to secure the ends of justice.”

8. The Apex Court in case of State of Karnataka V. L. Muni Swamy and others reported in **AIR 1977 SC 1489** laid down that High Court may quash a proceeding to come to the conclusion that allowing the proceeding to continue to abuse of the process of the Court or not in the ends of Justice. In the said judgment, the principle



is laid down in paragraph-7, which is quoted herein below :

“ In the exercise of the wholesome power, the High Court is entitled to quash a proceeding if it comes to the conclusion that allowing the proceeding to continue would be an abuse of the process of the Court or that the ends of Justice require that the proceeding ought to be quashed. The saving of the High Court's inherent powers, both in civil and criminal matters, is designed to achieve a salutary public purpose which is that a court proceeding ought not to be permitted to degenerate into a weapon of harassment or persecution. In a criminal case, the veiled object behind a lame prosecution, the very nature of the material on which the structure of the prosecution rests and the like would justify the High Court in quashing the proceeding in the interest of justice. The ends of justice are higher than the ends of mere law though justice has got to be administered according to laws made by the legislature. The compelling necessity for making these observations is that without a proper realisation of the object and purpose of the provision which seeks to save the inherent powers of the High Court to do justice, between the State and its subjects, it would be impossible to appreciate the width and contours of that salient jurisdiction.”

9. Moreover, the Apex Court in the case of State of



Haryana and others V. Harbhajan Lal and others reported in **AIR 1992 SC 604** elaborating the scope and ambit of Section 482 Cr.P.C. has broadly laid down seven category of cases where inherent power can be exercised under Section 482 Cr.P.C., which is as follows :

“ 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.”

9. Having considered the submission of both sides it appears that the daughter of petitioner no.1 Upendra Singh was married with Dr. Pankaj Kumar, son of the present informant of the case i.e. Janardan Prasad Singh. The daughter of petitioner no.1 has filed a case under Section 498A of the Indian Penal Code and Section 3/4 of the Dowry Prohibition Act for harassment and torture on account of non-fulfillment of demand of dowry i.e. Ranchi Mahila P.S. Case No.10 of 2011 two months prior to filing of the present complaint. The relationship is strained due to discord in conjugal relationship between the son of the complainant of the present case and the daughter of the petitioner no.1. The present case appears to have been filed in order to take vengeance from the petitioners as daughter of petitioner no.1 has filed case against the complainant and his son. The investigating agency also found the case of kidnapping not true. Moreover, the accusation also appears absurd as allegation is of making an attempt of kidnapping of the informant by the accused persons at day hours from a busy place. There is no allegation that any



such attempt was made with use of fire arms or any deadly weapon.

Therefore, the present case comes within the ambit of category 7 of the **Harbhajan Lal case (surpa)** so present case also appears malicious in nature for wreaking vengeance on accused i.e. other side, it is not prosecution rather persecution with a view to settle the personal grudge by opposite party no.2, so continuance of the present proceeding is abuse of the process of the Court. Therefore, the impugned order dated 14.12.2011 and subsequent proceeding in the instant matter is set aside.

10. In the result, this quashing petition is allowed.

(Arun Kumar, J)

Arvind/-

AFR/NAFR	AFR
CAV DATE	
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