

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.44628 of 2013

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Roshan Ara D/o Allauddin wife of Parwej Alam resident of Grandi Adalhat
P.S. Adalhat Distt. Mirzapur.

.... Petitioner/s

Versus

1. The State of Bihar
2. Parwej Alam son of Md. Akil Ahamad
3. Md. Akil Ahamad Son of Late Hazi Abdul Latif Both (2 &3) are resident
of Village Samdhinia P.S. Jale, Distt. Darbhanga

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Shankar Kishore Shahi

For the Opposite Party/s : Mr. Nirmala Kumari (App)

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD

ORAL ORDER

7 05-07-2017 Heard Mr. Shankar Kishore Shahi, learned counsel for
the petitioner and learned counsel for the O.P. No. 2.

On the last date, learned counsel for the O.P. No. 2
prayed for an indulgence by way of last chance to contact his
client and come with his instruction. However, he submits that
despite his best effort, no instruction could be received from O.P.
No. 2.

In the present case, petitioner is wife of O.P. No. 2. She
is seeking quashing of the order dated 16.05.2008 passed by the
learned Judicial Magistrate-1st Class, Darbhanga in Complaint
Case No. 1531 of 2007 filed on 29.10.2007.

Learned counsel for the petitioner submits that the
admitted facts which are substantiated from the records, not



disputed by O.P. Nos. 2 and 3 would show that the complaint filed by the O.P. No. 2 is nothing but mala fide prosecution of the petitioner, her parents, brother and sister. The learned counsel submits that admittedly marriage between the petitioner and O.P. No. 2 took place on 01.06.2003 according to Muslim rites and customs. Father of the petitioner had given a lot of gifts at the time of marriage. However, after birth of a female child, the O.P. No. 2 began to torture the petitioner. The allegation is that of demand of dowry.

The learned counsel for the petitioner submits that the petitioner filed a complaint case bearing No. 2583 of 2007 (Roshan Ara Vs. Parvej Aalam & Ors) under Sections 323 and 498-A IPC read with Section 34 of Dowry Prohibition Act at P.S. Adalhat, Distt. Mirzapur in the State of U.P. In the said case a non-bailable warrant was issued by the court of learned Additional Judicial Magistrate-V, Mirzapur, against which the O.P. no. 2 filed an application under Section 482 Cr.P.C. in the Hon'ble Allahabad High Court, giving rise to Criminal Miscellaneous No. 12100 of 2009. The case was referred to Mediation Center, however, no mediation could take place, ultimately, the Hon'ble High Court considered the said application under Section 482 Cr.P.C. filed by O.P. No. 2 on its own merit and the same was dismissed vide



order dated 09.05.2014. The O.P. No. 3 is one of the accused in the said case. There are allegations of demand of dowry and torture against O.P. No. 2 and 3.

It is the case of the petitioner that the O.P. No. 3, who is father of O.P. No. 2, filed the present complaint case in the court of learned Chief Judicial Magistrate, Darbhanga, and in the said case order taking cognizance under Sections 147, 341, 323, 380 and 379 IPC and issuance of summons was passed as back as on 16.05.2008 but the summon was never served upon the petitioner. In fact, records have been placed with the application showing that in the year 2010 compromise was reached between the petitioner and O.P. No. 2 as they wanted to arrive on an amicable resolution of dispute. In the said agreement also there was no disclosure of the complaint case filed by the O.P. No. 3 at Darbhanga. The factum of compromise was brought on record of the Complaint Case No. 2583 of 2007 pending in the court of Learned A.C.J.M.-II, Mirjapur and the same is Annexure-‘7’ of the present petition.

The uncontroverted case of the petitioner supported by Annexure-8, Annexure-9 and Annexure-10 to the application would show that after the aforesaid compromise, the parties lived together and the petitioner gave birth to a female child in the year 2012. In the circumstances appearing from the record, this Court



has reasons to believe that neither the summon of the case was served to the petitioner nor there was any disclosure of the complaint case by the O.P. No. 3. The O.P. No. 2 did not disclose about this case. In an another proceeding initiated by the present petitioner in Mirjapur under Section 125 Cr.P.C. also the O.P. No. 2 never disclosed about the filing of complaint case by O.P. No. 3 against this petitioner.

Learned counsel has, therefore, vehemently submitted that not only the statements made in the complaint petition are showing it a case of mala fide prosecution but even the conduct of the O.P. Nos. 2 and 3 would show that they kept the complaint case pending with a mala fide intention to harass the petitioner who is living presently at Mirjapur. He thus submits that continuance of the present proceeding is only an abuse of the process of the Court, therefore this court can exercise it's inherent jurisdiction to quash the present proceeding in the interest of justice.

Learned counsel for the O.P. No. 2 and 3 though present but is unable to controvert the submissions, he submits that despite his all efforts, he could not contact his clients, so no instruction could be received.

I have gone through the submissions made in the



complaint petition. Allegations are that all the five accused persons, named in the complaint, entered in the house of the complainant and started hurling abuses as also indulged in physical assault with the wife of the complainant. It is alleged that the accused no. 3 who is mother of this petitioner snatched away one golden chain from the wife of the complainant and all the accused persons took away three suit case containing the ornaments and cash worth Rs. 50,000/- and Rs. 15,000/- respectively.

The complainant, thereafter, narrated the story about the marriage between daughter of accused no. 1 and the son of the complainant. He has further alleged that his son had given divorce to the present petitioner in the year 2006 and had also remitted the *mehar* amount, however, the petitioner refused to acknowledge the same in a document which led to the present dispute. The complainant admits that there was a Panchayat with the intervention of the near relation of both the parties, however, it is alleged that the petitioner and other accused persons refused to abide by the decision of the Panchayat. It is admitted that the O.P. No. 3 and father of this petitioner are closely related to each other as first cousin.

A bare reading of the application made in the complaint



petition would show that the allegations are only ornamental in nature and seem highly improbable on the face of the materials which are available on the record and have not been controverted by the O.P. Nos. 2 and 3 despite several adjournments. The learned Magistrate has taken cognizance of the offences under Sections 147, 341, 323, 380 and 379 IPC and decided to issue summons against all the accused persons including the present petitioner.

This Court therefore, reaches to a conclusion that the present complaint filed on 29.10.2007 is a mala fide prosecution initiated by the O.P. No. 3 after the petitioner filed a Complaint Case No. 2583 of 2007 at Mirzapur which was fixed for appearance of the petitioner on 15.10.2007. The complaint was apparently filed to keep the petitioner under pressure and to refrain her from proceeding against the O.P. No. 2 and 3. A bare perusal of the allegations made in the complaint petition would show that the matrimonial dispute between the petitioner and O.P. No. 2 has led to filing of the present complaint. In the whole complaint there is no allegation against this petitioner as only general and omnibus allegations which seems highly improbable have been made. It is, thus, one of the cases falling under the illustrations given by the Hon'ble Supreme Court in **the State of Haryana Vs. Bhajanlal**



reported in **AIR 1992 SC 604**.

In view of the tests laid down by the Hon'ble Supreme Court in the case of **Prashant Bharti Vs. State of NCT of Delhi** reported in **AIR 2013 SC 2753**, I find that the materials available on the record are unimpeachable and uncontroverted as also reliable, hence this Court can consider the case of the petitioner relying upon those documents. This Court having examined the materials available on the record comes to a conclusion that in the present case order taking cognizance has been passed in a routine and mechanical manner. In the nature of this case further continuation of the criminal proceeding against the petitioner would only be an abuse of the process of Court.

In the facts and circumstances stated above, the criminal proceeding vide order dated 16.05.2008 passed in Complaint Case No. 1531 of 2007 pending before Sri. B. Pandey, the learned Judicial Magistrate-1st Class, Darbhanga is hereby quashed.

(Rajeev Ranjan Prasad, J)

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