

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.28716 of 2012

Arising Out of PS.Case No. -2993 Year- 2011 Thana -null District- BEGUSARAI

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1. Sushanta Kumar Ghosh S/O Late Ashwani Kumar Ghosh Resident Of 174 B, Birla Colony, P.S.- Phulwarisarif Town And District- Patna
2. Smt. Sheela (Sarkar) Ghosh W/O Sushanta Kumar Ghosh Resident Of 174 B, Birla Colony, P.S.- Phulwarisarif Town And District- Patna
3. Sharmishtha Ghosh D/O Sushanta Kumar Ghosh Resident Of 174 B, Birla Colony, P.S.- Phulwarisarif Town And District- Patna
4. Devbrat Ghosh S/O Sushanta Kumar Ghosh Resident Of 174 B, Birla Colony, P.S.- Phulwarisarif Town And District- Patna

.... Petitioner/s

Versus

1. The State Of Bihar
2. Amar Biswas S/O Late B.K. Biswas Guidance Centre, 303, C.R. Complex, 4th Floor, R.K. Bhattacharya Road, P.S.- Gandhi Maidan, Town And District- Patna

.... Opposite Party/s

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Appearance :

For the Petitioners : Mr. Kamlesh Kumar Sharma, Adv.
For the State : Mr. Shantanu Kumar, APP

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CORAM: HONOURABLE MR. JUSTICE SANJAY PRIYA

ORAL JUDGMENT

Date:-10-2017

1. This petition has been filed for quashing the impugned order dated 27-04-2012 passed by learned Judicial Magistrate-Ist Class, Patna in Complaint Case No. 2993C of 2011 by which and whereunder, the learned Magistrate has found prima facie case against the petitioners under Sections-344, 504/34 of the Indian Penal Code.

2. It is alleged in the complaint that the petitioner Nos. 1 & 2 approached the complainant for marriage of their daughter Sharmistha Ghosh (petitioner No. 3) with Biswajit, the nephew of the complainant. The marriage however was settled with Mitali, the younger sister of petitioner No. 3 for certain reasons and engagement was done on 28-07-2008.



3. The complainant was under monetary constraints and therefore, he requested petitioner Nos. 1 & 2 to defer the marriage for one year. The petitioner No. 1 insisted to perform the marriage earliest and forced the complainant to accept the loan of Rs. 1,71,000/- for that purpose. The marriage was solemnized on 22-11-2008 at the house of petitioner Nos. 1 & 2. It was decided that some of the loan amount would be adjusted by petitioner Nos. 1 & 2 against the purchase of gifts to be given to Biswajit and Mitali and if some money is left, same would be returned in installments. The complainant returned Rs. 72,000/- in five installments as mentioned in the complaint petition. It is further alleged that from the very beginning of the marriage, petitioner No. 3 who is very ill temper and ill manner, started creating differences for not marrying her with Biswajit. No family member of Mitali sent any good wishes either in the birthday of Biswajit or in the first marriage anniversary of Mitali for which, Mitali was very upset. Mitali became pregnant and she was regularly taken to Tripolia Hospital for check up between September 2010 and January 2011. It is alleged that on 19-01-2011, petitioner Nos. 1 & 2 came to the complainant and requested him to allow them to take Mitali with them till delivery. The complainant allowed them to take Mitali with them and they also made request to take the ornaments because no body will remain in home during working hours. The accused persons took Mitali with them along with ornaments. On 27-04-2011, Mitali gave birth to male child by caesarean for which the complainant signed the bond. The accused persons requested to take Mitali with them for her further treatment. They took away all the bills and prescriptions along with Mitali which they would require to show the doctor. During her stay at her parents' house, Mitali always remained in contact with Biswajit and the complainant on mobile phone provided to her by the complainant. Mitali informed Biswajit that Sharmishtha is making her life



miserable, insults her, calls name to Biswajit and the complainant and on protest, she becomes violent and other members of the family support her. She requested Biswajit to take her with him. Biswajit went to bring Mitali and his son back but Mitali was not allowed to come and Biswajit and his friend, who had accompanied him, were insulted and abused by Sharmishtha and her mother. The complainant thereafter talked to petitioner No. 1 and informed that he wants to bring back Mitali and her son. Sharmishtha came along with accused persons in the house of complainant on the next day and informed that they would not allow Mitali to lead happy conjugal life. The complainant received legal notice from Sushanto to return the money to him which was allegedly taken by him as loan. The complainant replied to the notice stating therein that he had taken accommodation loan of Rs. 1,71,000/- and how the same was adjusted. Thereafter, Arvind Kumar Singh rang up the complainant and asked for Rs. 50,000/- to settle the dispute. He also gave threat that in the event, the money is not paid, then the whole family of the complainant would be implicated in the false case. The complainant refused to pay the amount. The complainant and Biswajit again on 16-10-2011 went to bring Mitali but on that date, accused persons assaulted abused and drove out the complainant and Biswajit out of the house and threatened that they would be dragged in false criminal cases.

4. Heard learned counsel for the petitioners, learned APP and the counsel appearing for Opposite Party No. 2.

5. Counsel for the petitioner has submitted that petitioner No. 1 has filed complaint case bearing Complaint Case No. 673 C of 2011 on 28-07-2011 against the present complainant and four others namely, Biswajit Biswas, Apurva Ghosh, Rajshree Ghosh and Jay Shree Biswas and in that case, after inquiry, prima facie case was found under Section-498A of the Indian Penal Code against



the complainant Amar Biswas, Biswajit Biswas, Apurva Ghosh, Rajshree Ghosh and Jay Shree Biswas on 11-06-2012. The petitioner No. 1 also filed informatory petition on 17-10-2011 stating therein that the present complainant and his family members are threatening to withdraw the complaint case filed by petitioner No. 1 otherwise he will be involved in false case.

6. The present complaint case filed against the petitioners is nothing but a counter blast of Complaint Case No. 673C of 2011. The complainant has filed the instant false and concocted complaint case to save himself as well as his family members' skin. No such occurrence has taken place as alleged in the complaint petition.

7. Counsel for opposite party No. 2 and learned APP have submitted that the learned court below after holding inquiry found prima facie case against these petitioners for the offence under Sections-344, 504/34 of the Indian Penal Code.

8. Having heard both the parties, this court finds that prior to filing of the instant complaint by the complainant on 09-11-2011, the petitioner No. 1 had filed Complaint Case No. 673C of 2011 against the complainant and others and in that case, learned Magistrate has found prima facie case against the complainant and others for the offence under Section-498A of the Indian Penal Code.

9. In the instant case, general and omnibus allegation has been levelled against the petitioners by the complainant that when Biswajit went to bring his wife Mitali, the accused persons (petitioners) did not allow to bring her and these accused persons assaulted Biswajit and his friends who have gone to bring Mitali.

10. This court finds that the instant case is counter blast of Complaint Case No. 673C of 2011 filed by petitioner No. 1 against the complainant Amar



Bishwas, his nephew Biswajit and other accused persons named in the complaint petition, in which, the court below has after holding inquiry found prima facie case against all the accused persons for the offence under Section-498A of the Indian Penal Code.

11. As such, the instant case has been filed by the complainant maliciously with ulterior motive for wreaking vengeance on the petitioners and with a view to spite them due to personal grudge on account of earlier Complaint Case No. 673C of 2011 filed by petitioner No. 1 against the complainant and others.

12. Therefore, the continuance of criminal proceeding against the petitioners is an abuse of the process of the court and harassment to the petitioners.

13. Accordingly, the impugned order dated 27-04-2012 passed by learned Judicial Magistrate-Ist Class, Patna in Complaint Case No. 2993C along with entire criminal proceeding is hereby quashed with respect to these petitioners.

14. Accordingly, this Cr. Misc. Application is allowed.

(Sanjay Priya, J)

A.K.V./-

AFR/NAFR	AFR
CAV DATE	07-09-2017
Uploading Date	19-10-2017
Transmission Date	19-10-2017

