

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.42931 of 2011

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

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1. Md. Shahid Iqbal S/O Late Md. Fariduddin R/O Vill. Kanahipur, P.S. Mokama, Distt. Patna
 2. Md. Kausar Neyazi @ Guddu S/O Late Md. Fariduddin R/O Vill. Kanahipur, P.S. Mokama, Distt. Patna
 3. Jahan Ara @ Ruby W/O Md.Shahid Iqbal R/O Vill. Kanahipur, P.S. Mokama, Distt. Patna
 4. Rumana Ashrafi @ Saba W/O Md. Kausar Neyaji R/O Vill. Kanahipur, P.S. Mokama, Distt. Patna

.... Petitioner/s

Versus

1. The State Of Bihar
2. Raziya Khatoon W/O Md. Javed Aslam R/O Mohalla- Bari Dargah, P.S. Bihar, Distt. Nalanda, At Present R/O Vill. Kanahipur, P.S. Mokama, Distt. Patna

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Sandeep Kumar, Adv.
Mr. Najeeb Ahmed, Adv.
For the State : Mr. Nawal Kishore Prasad, APP

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CORAM: HONOURABLE MR. JUSTICE SANJAY PRIYA

ORAL JUDGMENT

Date: 10-10-2017

1. Heard learned counsel for the petitioners. Learned counsel for opposite party No. 2 does not appear although notice has validly been served upon him. Heard learned APP for the State.

2. This petition has been filed for quashing the impugned order dated 28-04-2011 passed by learned Sub Divisional Judicial Magistrate, Bihar Sharif Nalanda in Complaint Case No. 756C of 2010 by which and whereunder, the learned Magistrate after inquiry found prima facie case against the petitioners for the offence under



Sections-498A, 323/34 of the Indian Penal Code and 4 of D.P.Act.

3. It has been submitted that malicious prosecution has been filed by the complainant at the instance of her husband, Javed Aslam on account of property dispute. Counsel for the petitioners has submitted that father in law of the complainant has filed informatory petition before the Additional Chief Judicial Magistrate, Barh on 26-03-2009 regarding illegal demand of his son, Javed Aslam over his exclusive property and threat was given in furtherance of the same. It has further been submitted that father in law of the complainant on 17-04-2010 instituted a police case bearing Mokama P.S. Case No. 76 of 2010 against the husband of the complainant which was registered for the offence under Sections-448, 323, 341, 380/34 of the Indian Penal Code. The husband of the complainant after institution of aforesaid Mokama P.S. Case No. 76 of 2010 started giving threat to the informant for withdrawal of case for which, father in law of the complainant filed an application before Sub Divisional Superintendent of Police, Barh, Patna and in retaliation, husband of the complainant filed Mokama P.S. Case No. 77 of 2010. He has also initiated a proceeding under Section-107 of the Cr.P.C. before SDO against his brothers (petitioners) which was registered as case No. 573 of 2011. The police has submitted report dated 15-01-2011 to the effect that Ist Party and 2nd party are full brothers and have dispute over residential



house. The husband of the complainant in the year, 2009 has made an application dated 01-07-2009 before Circle Officer, Mokama stating therein that his brothers have created forged document and may apply for mutation. It has further been submitted that the entire chain of events substantiate that malicious prosecution has been filed by the complainant at the instance of the husband.

4. In the instant complaint, the complainant has not named her husband as accused. She has named her husband as witness. She has filed instant case against two brothers of her husband as well as father in law and family members.

5. The court below by the impugned order has found prima facie case against the petitioners for the offence under Sections-498A, 324 of the Indian Penal Code and 4 of D.P. Act.

6. From perusal of the entire complaint petition filed by the complainant, it appears that there is general and omnibus allegation against all the petitioners. Further it appears that she has named her husband as witness in the aforesaid complaint. Petitioner nos. 1 & 2 are brothers and petitioner nos. 3 & 4 are wives of petitioner Nos. 1 & 2.

7. In the aforesaid circumstances, this court is of the view that the instant complaint has been filed just to harass the petitioners out of personal grudge on account of property dispute between the



husband of the complainant with his brothers and her father in law.

8. Accordingly, the impugned order dated 28-04-2011 passed by learned Sub Divisional Judicial Magistrate, Bihar Sharif Nalanda in Complaint Case No. 756C of 2010 along with entire criminal proceeding against the petitioners is hereby quashed.

Accordingly, this Cr. Misc. Application is allowed.

(Sanjay Priya, J)

A.K.V./-

AFR/NAFR	AFR
CAV DATE	
Uploading Date	16-10-2017
Transmission Date	16-10-2017

