

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.45027 of 2011

Arising Out of PS.Case No. -0 Year- null Thana -null District- EASTCHAMPARAN(MOTIHARI)

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1. Amzad @ Md. Amzad @ Amzad Ali Khan S/O Md. Wasim Resident Of
Mohalla - Imadpur Khurji , P.S. - Digha , District -Patna

2. Md, Mumtazuddin S/O Late Md. Allauddin Resident Of 126, Patliputra Colony
, P.S. - Patliputra , District - Patna

.... Petitioner/s

Versus

1. The State Of Bihar

2. Sohail Ahmad Khan S/O Late Safi Ahmad Khan Advocate , Resident Of
Mohalla - Belbanwa , P.S. - Town Motihari , District - East Champaran

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Nawal Kishore Singh, Adv.

For the Opposite Party/s : Mr. Anand Kishore Choudhary,APP

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CORAM: HONOURABLE MR. JUSTICE SANJAY PRIYA

ORAL JUDGMENT

Date: 06-11-2017

1. This application under Section 482 of the Code of Criminal Procedure has been filed for quashing the order dated 05.09.2011 passed by the Judicial Magistrate, Motihari, East Champaran, in Trial No.997 of 2011/Enq-54 of 2011 arising out of Complaint- cum-Protest Case No.1807 of 2007 by which the learned Magistrate after holding enquiry has found prima facie case against the petitioners for the offence under Section(s) 366, 498-A Indian Penal Code.
2. Heard learned counsel for the petitioner and learned counsel for the State.



3. Counsel for the petitioner has submitted that for the same occurrence earlier Complaint Case No. 2232(C) of 2004 Trial No. 2769 of 2005 has been filed and the same was quashed by a co-ordinate Bench of this Court by order dated 13.04.2007 passed in Criminal Miscellaneous No. 9209 of 2005. Both the parties had appeared and agreed to withdraw two criminal cases against each other and accordingly, the Hon'ble Court passed aforesaid order of quashing of proceeding of Complaint Case No. 2232(C) of 2004 Tr. No. 2769 of 2005 filed by Sohail Ahmad Khan, informant of this case, and also the proceeding of complaint case No. 3134(C) of 2004 filed by Rahat Jahan pending in the Court of learned Sub-divisional Judicial Magistrate, Sadar, Motihari.
4. Counsel for the petitioner has submitted that instant criminal prosecution lodged by the informant is malafide to harass the petitioners. The case was initially lodged on the basis of written information given by the informant as Motihari Town P.S. Case No. 256 of 2004 and after investigation, it was found that the case was false and police also recommended for taking action under Sections 182 and 211 of the IPC against the informant (O.P. No. 2) for giving false information to the police, on 28.02.2005. Thereafter, on the basis of protest petition, which was already filed by the O.P. No. 2 in the court of Chief Judicial Magistrate,



Motihari, the Court proceeded for enquiry and after enquiry, the court found prima-facie case against the petitioners for the offences under Sections 366, 498 IPC.

5. Learned counsel for the petitioners has submitted that the impugned order is illegal as the complainant has concealed the facts from the court below that earlier the complainant filed Complaint Case No. 2232 of 2004, for the same occurrence against the same accused persons which was quashed by the Hon'ble Court vide order dated 13.04.2007 passed in Criminal Miscellaneous No. 9209 of 2005. Relying on the decision of Hon'ble Supreme Court reported in **1992 Supp (I) S.C.C. 335 (State of Haryana Vs. Bhajan Lal)** and also a decision reported in **2003 (2) B.B.C.J. 61 (B.S. Joshi and Ors. Vs. State of Haryana and Another)** the counsel for the petitioner has submitted that the proceeding is liable to be quashed as the same has been lodged maliciously out of personal grudge with an intention to harass the petitioners.

6. Learned counsel for the petitioner has further submitted that High Court has inherent power to quash an FIR or a complaint entirely under Section 482 Cr.P.C. on the basis of allegations made in the complaint or the document accompanying the same.

7. In the instant case, from the earlier order of the Hon'ble



Court passed in Criminal Miscellaneous No. 9209 of 2005, it appears that that O.P. No. 2 and his wife had appeared before the Court and had stated that they have agreed to withdraw both the criminal cases filed by each other and also against the members of the respective family and they further agreed not to pursue the criminal cases against each other, and, accordingly, Hon'ble Court has quashed the criminal proceeding in Criminal Case No. 2232 (C) of 2004 giving rise to Tr. No. 2769 of 2005 filed by Sohail Ahmad Khan and also proceeding of Complaint Case No. 3134(C) of 2004 filed by wife of Sohail Ahmad Khan namely, Rahat Jahan.

8. The instant case was initiated on the basis of written report filed before the police and after investigation, the police found the allegation false and recommended for taking action against the informant under Sections 182/211 of IPC. The learned Court below on the basis of protest/complaint proceeded for enquiry and in mechanical manner after holding enquiry found prima facie case against the petitioners for the offence under Sections 366 and 498 IPC.

9. This Court is of the view that the continuance of this proceeding against the petitioners is mere harassment to them as the same has been 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.

10. Therefore, the impugned order dated 05.09.2011 passed by the Judicial Magistrate, Motihari, East Champaran, in Trial No.997 of 2011/Enq-54 of 2011 arising out of Complaint- cum- Protest Case No.1807 of 2007 along with entire criminal prosecution against the petitioners is quashed.
11. This criminal Miscellaneous application is allowed.

(Sanjay Priya, J)

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AFR/AFR	AFR
CAV DATE	-----
Uploading Date	16-11-2017
Transmission Date	16-11-2017

