

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.30163 of 2014

Arising Out of Complaint Case No. -2003 Year- 2013 Thana -KATIHAR District- KATIHAR

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1. Nakshtra Kumar Mandal
 2. Pradeep Kumar Singh
 3. Shankar Kumar All are sons of Dwarika Prasad Singh
 4. Juli Devi @ Juli Kumari wife of Shankar Kumar
All resident of village- Basuhar Majdia, P.O.- M.T. Devipur, P.S.- Kurshela,
District- Katihar.

.... Petitioner/s

Versus

1. The State of Bihar.
2. Savita Mandal wife of Nakshtra Kumar Mandal, daughter of Patel Sahni
presently residing at Police Line, Katihar, P.S. and District- Katihar.

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Jibendra Misha, Advocate

For the Opposite Party/s: Mr. Amrendra Prasad, APP

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CORAM: HONOURABLE MR. JUSTICE SANJAY KUMAR

ORAL JUDGMENT

Date: 11-09-2017

1. Heard both sides and perused the record.

2. This criminal miscellaneous application under section 482 of the Code of Criminal Procedure, has been filed to quash the order dated 12.03.2014 passed by the learned Sub-Divisional Judicial Magistrate, Katihar in Complaint Case No. 2003 of 2013 whereby and whereunder the learned Magistrate finding *prima facie* case for the offence under section 498A/34 of the Indian Penal Code, summoned the petitioners.

3. The opposite party no. 2 filed a Complaint Case No. 2003 of 2013 against these petitioners, who are her husband and



in-laws alleging therein that they used to torture and assault her, as she being Government service refused to pay money to them from her salary. In course of enquiry, the complainant and her witnesses supported the allegation of torture and the learned Magistrate accordingly took cognizance of offence and summoned the petitioners.

4. The learned counsel for the petitioners submits that the petitioner no. 1 is husband of opposite party no. 2. The petitioner nos. 2 and 3 are full brothers of petitioner no. 1 and petitioner no. 4 is wife of petitioner no. 3. The marriage of petitioner no. 1 with opposite party no. 2 was performed on 25.09.1998 and from the said wedlock, she has been blessed with two sons, who were aged about 12 years and 10 years at the time of filing of complaint petition. The opposite party no. 2 got service in Bihar Police and she was posted as Constable at Supaul in the year 2007 and thereafter, she left residing at her husband's place. In spite of repeated request, she did not visit at her husband's place to take care of her husband and children. On the request of petitioner no. 1, the opposite party no. 2 was posted at Katihar, which is the home district of her husband. It has been alleged that she was living in adulterous life in the Company of Constable and so, on the request of husband, she was transferred to Katihar which caused announce to the wife-opposite party no. 2 and out of



annoyance, she lodged the Complaint Case No. 2003 of 2013 and a Divorce Case No. 413 of 2013 with false and frivolous allegation of torture and demand of money. The witnesses, who supported the allegation of torture, are parents and one of the Constable, who is posted with his wife. The Principal Judge, Family Court disbelieved the grounds taken in divorce petition and dismissed the divorce case against which the opposite party no. 2 has filed an appeal before this Court. The allegation of torture is omnibus and no offence under section 498A of the Indian Penal Code, is made out against the petitioners. The learned Magistrate without applying judicial mind, has passed the order in mechanical manner and so, the impugned order is fit to be quashed.

5. On the other hand, the learned counsel for the opposite party no. 2 as well as learned Additional Public Prosecutor vehemently opposed the submission.

6. On perusal of complaint petition and the documents on record, I find that the opposite party no. 2 was married with the petitioner no. 1 on 25.09.1998. The opposite party no. 2 joined the service of Bihar Police and she was posted at Supaul in the year 2007. From the said wedlock, she has been blessed with two sons, who were aged about 12 years and 10 years at the time of filing of complaint petition. Since the date of marriage till 2012 the complainant has not



complained against her husband or in-laws. The petitioner no. 1, happens to be Government Teacher, who feeling inconvenience in looking after his two children, submitted an application to the Superintendent of Police, Supaul for transfer of his wife to Katihar, The Superintendent of Police, in view of Government Circular regarding posting of wife and husband at one place, as per letter dated 30.11.2009 (Annexure-4) addressed to I.G. Darbhanga Range, reported that the opposite party no. 2 has expressed her inclination to remain at Supaul district. Thereafter, the petitioner no. 1 along with his two children, personally met the Superintendent of Police, Supaul and on their request, the Superintendent of Police, Supaul recommended the I.G. Darbhanga, vide Memo No. 2073 dated 09.12.2011 (Annexure-7), for her transfer and accordingly, she was transferred to Katihar. It further appears that the opposite party no. 2 only after her joining at Katihar, filed a Complaint Petition No. 2003 of 2013 on 07.08.2013. She further filed a Divorce Case no. 413 of 2013 under section 13 (1) (1-B) of the Hindu Marriage Act, 1955 on 04.09.2013. Both the cases were filed simultaneously. The divorce case was contested by petitioner no. 1 and the same was dismissed, as per judgment dated 12.01.2017 passed by the learned Additional Principal Judge, Family Court, Katihar. In the said matrimonial case, the husband and his both sons deposed against the opposite party no.2.



It has been submitted that the opposite party no. 2 filed an appeal before this Court. The documents, annexed with this quashing application, are unimpeachable and are enough to show that the opposite party no. 2 has filed the complaint petition with an ulterior motive and vengeance. The allegation of torture also appears omnibus. There are contradictions also in the statement of witnesses recorded at the time of enquiry. As such, the criminal prosecution of these petitioners in the above background appears to be an abuse of process of Court.

7. The principles relating to exercise of jurisdiction under section 482 of the Cr.P.C. to quash the complaint and criminal prosecution have been considered by the Hon'ble Apex Court in several decisions. In State of Haryana and others vs. Bhajan Lal and others [1992 Supp (1) SCC 335] certain parameters have been pointed out in paragraph 102 by the Hon'ble Supreme Court under which prosecution launched in a complaint or FIR may be quashed in exercise of jurisdiction under section 482 of the Cr.P.C.. It reads as under

“102. 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."

8. The present case is squarely covered by the guidelines of the Hon'ble Supreme Court given at paragraph 102 of above case. In this regard I would like to refer the case of Neelu Chopra vs. Bharti



(2009) 10 SCC 184, Geeta Mehrotra and others vs. State of U.P. and others (2012) 10 SCC 741, 2013 (2) PLJR 210 (S.C.), Preeti Gupta and others vs. State of Jharkhand and others (2010) 7 SCC 667 wherein the Hon’ble Apex Court has reiterated that in absence of specific allegation and *prima facie* case against co-accused, the order taking cognizance will be bad in law and that will be an abuse of process of court.

9. Having regard to the facts and circumstances of the case and taking into consideration the law laid down by the Hon’ble Supreme Court in the decision quoted above, the order dated 12.03.2014 passed by the learned Sub-Divisional Judicial Magistrate, Katihar in Complaint Case No. 2003 of 2013 against these petitioners as well as their criminal prosecution on the basis of said order, is hereby quashed.

10. Accordingly, this criminal miscellaneous application is allowed.

(Sanjay Kumar, J)

Mahesh/-

AFR/NAFR	NAFR
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