

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.45639 of 2013

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

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1. Bhola Yadav Son Of Late Somar Yadav
 2. Kari Devi Wife Of Bhola Yadav
 3. Goreya Devi D/O Bhola Yadav
All resident Of Village-Lohgani, P.S.-Sohsarai District-Nalanda
 4. Gigal Yadav Son Of Late Dowarik Yadav Resident Of Mohalla-Sohsarai,
Chilkaper, P.S.-Soh Sarai, District-Nalanda

.... Petitioners

Versus

1. The State Of Bihar
2. Ramjanam Yadav Son Of Late Dahu Yadav Resident Of Mohalla-Bouliper,
Mogal Kunwan P.S.-Sohsarai, District-Nalanda
3. Manju Devi Wife Of Patwari Yadav
4. Dhauri Yadav Son Of Babu Daha Singh Resident Of Village-Lodhipur,
(Khusarupur) P.S. Khusarupur, District-Patna

.... Opposite Parties.

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Appearance :

For the Petitioner/s : Mr. Raj Kumar Singh, Advocate
For the State : Mr. Jharkhandi Upadhyay, APP
For the Opposite Party/s : Mr. Rajbansh Dubey, Advocate
Mr. Rudal Singh, Advocate

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 18-05-2017

This application under Section 482 of the Code of Criminal Procedure (for short “CrPC”) has been filed for quashing the order dated 19.06.2012 passed by the learned Judicial Magistrate, 1st Class, Biharsharif, Nalanda in Complaint Case No.



476(C) of 2011 by which the petitioners have been summoned to face trial for the offence punishable under Section 379 of the Indian Penal Code (for short “IPC”).

2. Learned counsel for the petitioners submitted that the instant complaint has been launched with ulterior motive in order to put pressure upon the petitioners to get Complaint Case No. 345(C) of 2011 instituted against the complainant and his family members to be compounded. He contended that the complaint in question is a counter blast to aforesaid Complaint Case No. 345(C) of 2011.

3. On the other hand, learned counsel for the complainant/opposite party no. 2 submitted that the allegations made in the complaint do attract the ingredients of the offence punishable under Section 379 of the IPC and on the basis of statement of the complainant and the statement of witnesses examined in course of inquiry conducted under Section 202 of the CrPC, learned Judicial Magistrate, 1st Class has rightly summoned the petitioners to face trial.

4. I have heard learned counsel for the parties and perused the record.

5. It would be evident from Annexure-2 to the present application that the Complaint Case No. 345(C) of 2011



was instituted against the complainant Ramjanam Yadav on 06.04.2011 by one Tullu Devi, daughter of the petitioner nos. 1 and 2, under Sections 323, 341, 379, 307, 315, 504, 494 and 498-A of the IPC and Sections 3 and 4 of the Dowry Prohibition Act. She has stated in complaint that she was married to one Binod Yadav son of the complainant of the present case Ramjanam Yadav in the year 2007 and since the date of her marriage, she was being subjected to cruelty for non-fulfilment of demand of motorcycle and golden chain. She has stated that her husband and in-laws brutally assaulted her on several occasions which even caused miscarriage. She alleged that on 18.02.2011, her husband Binod Yadav married another lady, namely, Rina Devi, daughter of one Manoj Yadav and brought her in her matrimonial house and kicked her out.

6. It would be evident that after institution of the aforesaid complaint, father-in-law of Tullu Devi, Ramjanam Yadav instituted the complaint in question on 09.05.2011 alleging therein that his daughter-in-law used to frequently leave her matrimonial home. He has stated that she used to fight with her husband and family members. According to him, the mental condition of his daughter-in-law was not in order. He stated that 10 days prior to the date of institution of the complaint, his daughter-in-law had left matrimonial home and because of that the relationship between the



members of the two families had worsened. He stated that on 08.05.2011 in the evening the accused Bhola Yadav, his wife Kari Devi, his daughter Guriya Devi and his son-in-law Giral Yave came to his house and proposed for a *panchayati* to resolve the issue. In the night, they stayed in his house and in the morning, when he woke up, he found that they all had left his house. He further found that several household articles, cash and utensils were also missing. It is stated that on alarm made by him, several persons of the locality came to his house who disclosed that in the morning, at about 5 a.m., the accused persons were seen going towards east of the village along with articles taken away by them in their hand.

7. After institution of the complaint, the complainant was examined on oath and apart from him, one Dhuri Yadav and Manju Devi were examined during inquiry conducted under Section 202 of the CrPC. Thereafter, the learned Magistrate, 1st Class vide impugned order dated 19.06.2012 took cognizance of the offence under Section 379 of the IPC and summoned the petitioners to face trial.

8. Having seen the contents of the complaints, I am of the opinion that the complaint in question is nothing but a misuse of the process of the court. It has been instituted by the complainant as a counter blast to the complaint instituted by the



daughter of petitioner no. 1 Bhola Yadav for the offences punishable *inter alia* under Section 498-A of the IPC and Sections 3 and 4 of the Dowry Prohibition Act against the complainant and his family members. In the complaint instituted by Tullu Devi, it is categorically stated that the complainant was driven out of her matrimonial home on 18.02.2011 and since then she was living together with her parents. In that view of the matter, the allegation made in the present complaint that Tullu Devi lastly left her home ten days before the institution of the complaint, i.e. 09.05.2011 seems to be highly unbelievable.

9. Moreover, the manner in which the entire allegation has been made in the complaint in question seems to be highly improbable. It is unbelievable that the parents of a married lady along with their another daughter and son-in-law would visit the matrimonial home of their daughter and after staying there in night will run away with household articles in the morning. The Court is alive to situation where in certain cases parents interference in the married life of their daughters become havoc with lives of young couples after marriage, but the society has yet not denigrated to the level where the parents would commit theft in the matrimonial house of their own daughter to ruin her matrimonial life.



10. Palpably, it is a vexatious complaint instituted by the complainant to otherwise settle his score and to put pressure upon the petitioners in order to get Complaint Case No. 345(C) of 2011 compromised.

11. From a perusal of Section 482 of the CrPC, it would be evident that object of exercise of power under the said Section is to prevent the abuse of the process of law and to secure the ends of justice.

12. In **Rajiv Thapar and Ors. vs. Madan Lal Kapoor [(2013) 3 SCC 330]**, the Hon'ble Supreme Court enumerated four steps required to be followed before invoking inherent jurisdiction by the High Court under Section 482 of the CrPC as under :-

“30. Based on the factors canvassed in the foregoing paragraphs, we would delineate the following steps to determine the veracity of a prayer for quashment raised by an accused by invoking the power vested in the High Court under Section 482 of the Cr.P.C.:-

30.1. Step one: whether the material relied upon by the accused is sound, reasonable, and indubitable i.e. the material is of sterling and impeccable quality ?

30.2. Step two: whether the material relied upon by the accused would rule out the assertions contained in the charges levelled against the accused i.e. the material is sufficient to reject and overrule the factual assertions contained in the complaint i.e. the material is such as would persuade a reasonable person to dismiss and



condemn the factual basis of the accusations as false.

30.3. Step three: whether the material relied upon by the accused has not been refuted by the prosecution/complainant; and/or the material is such that it cannot be justifiably refuted by the prosecution/complainant?

30.4. Step four: whether proceeding with the trial would result in an abuse of process of the court, and would not serve the ends of justice?

30.5. If the answer to all the steps is in the affirmative, the judicial conscience of the High Court should persuade it to quash such criminal proceedings in exercise of power vested in it under Section 482 of the Cr.P.C. Such exercise of power, besides doing justice to the accused, would save precious court time, which would otherwise be wasted in holding such a trial (as well as proceedings arising therefrom) specially when it is clear that the same would not conclude in the conviction of the accused.”

13. In **Rishipal Singh vs. State of Uttar Pradesh and Anr.** [(2014) 7 SCC 215], the Hon’ble Supreme Court in the similar circumstances observed: *“it is no doubt true that the courts have to be very careful while exercising the power under Section 482 CrPC. At the same time we should not allow a litigant to file vexatious complaints to otherwise settle their scores by setting the criminal law into motion, which is a pure abuse of process of law and it has to be interdicted at the threshold....”*

14. In view of the above settled position of law and



having regard to the facts and circumstances of the case and after going through the criminal complaint filed against the petitioners and the criminal complaint filed by the daughter of petitioner no. 1 against the complainant and his family members much prior to the present complaint in question, I am of the considered opinion that it is a clear case of abuse of the process of law on the part of opposite party no. 2.

15. In that view of the matter, the application deserves to be allowed. Accordingly, the same is allowed. The impugned order dated 19.06.2012 passed by the learned Judicial Magistrate, 1st Class, Biharsharif, Nalanda in Complaint Case No. 476(C) of 2011 is hereby quashed. Consequently, the entire proceedings arising out of Complaint Case No. 476(C) of 2011 are also hereby quashed.

(Ashwani Kumar Singh, J.)

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AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	22.05.2017
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