

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.30595 of 2013

Arising Out of PS.Case No. -1591 Year- 2011 Thana -KATIHAR COMPLAINT CASE District-
KATIHAR

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Umesh Hussain @ Tahabbul & Ors.

.... Petitioner/s

Versus

State of Bihar & Anr

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Najeeb Ahmad

For the Opposite Party/s : Mr. Anil Kr.Singh-1 (App)

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CORAM: HONOURABLE MR. JUSTICE SANJAY PRIYA

ORAL ORDER

23-01-2017

This is an application under Section 482 of the Code of Criminal Procedure for quashing the order dated 16.05.2013 passed by Sri Deepak Kumar, Judicial Magistrate 1st Class, Katihar in Complaint Case No.1591 of 2011 by which the learned Magistrate after holding enquiry has found prima facie case against the petitioners, for the offences under Sections 147, 380 and 385 of the Indian Penal Code.

Heard learned counsel for the petitioners as well as learned Additional Public Prosecutor for the State.

It is submitted by the learned counsel for the petitioners that the instant prosecution is malicious prosecution. The wife, Fatima Khatoon had already filed a Complaint Case No.1490 of 2011 against the complainant of the present case, who is her husband for the offence under Sections 498 (A) and 494 of



the I.P.C. She had also filed a separate petition for maintenance vide Maintenance Case No.111 of 2011 under Section 125 of Criminal Procedure Code dated 22.06.2011 against her husband Md. Mukhtar Alam who is the complainant of the present case.

The learned counsel has relied upon a decision reported in (2009) 3 SCC (Cri.) 620 ; Harmanpreet Singh Ahluwalia and others versus State of Punjab and others, and has stated that the cognizance taken under Sections 147, 380 and 385 of the Code of Criminal Procedure is bad in law. The Hon'ble Apex Court has held that :

“10. The parameters of interference with a criminal proceeding by the High Court in exercise of its jurisdiction under Section 482 of the Code are well known. One of the grounds on which such interference is permissible is that the allegations contained in the complaint petition even if given face value and taken to be correct in their entirety, commission of an offence is not disclosed. The High Court may also interfere where the action on the part of the complainant is mala



fide.”

He has also relied upon a decision reported in 2013 (2) PLJR 571:Chandra Shekhar Jha vs. State of Bihar; and has argued that the allegation on the face value manifestly appears absurd and malicious and, as such, the present petition is fit to be quashed. In this case the Apex Court has held that:

“2. Cases may also arise where the allegations in the First Information Report or the complaint, even if they are taken at their face value and accepted in their entirety, do not constitute the offence alleged; in such cases no question of appreciating the evidence arises; it is a matter merely of looking at the complaint or the First Information Report to decide whether the offence alleged is disclosed or not. In such cases it would be legitimate for the High Court to hold that it would be manifestly unjust to allow the process of the criminal court to be issued against the accused person.”

Having heard the parties and from perusal of the materials on record it is manifestly revealed that the complainant



is husband of petitioner no.10. The complainant has alleged that his marriage was solemnized in the year 1995. The husband and wife are of same village. At the time of marriage complainant and his father had also given ornaments of gold and silver and the same are still in custody of his wife. It is also alleged that the complainant took every care of his wife while she became pregnant but she gave birth to a dead child. It is further alleged that on 2.3.2011 at about 11.00 A.M. the accused persons in absence of complainant came in house with deadly weapons and took away petitioner no.10 and while they were going back, the accused no.1 entered eastern room and took away a box. Other accused persons took away utensil worth Rs.25,000/-. It is further alleged that the complainant on his return, went to accused persons and objected but they abused him and threatened to implicate him by causing abortion as his wife was carrying pregnancy of five months.

The petitioner has filed the xerox copy of Complaint Case No.1490 of 2011 vide Annexure-3 filed by his wife against the husband (complaint in the case) alleging cruelty on account of non-fulfillment of demand of dowry and performing second marriage under Sections 498 (A) and 494 of the I.P.C.



The instant complaint has been filed by the husband Md. Mukhtar Alam on 30.6.2011. The instant complaint is against the wife who is petitioner no.10 and other family members. Prior to filing of the present complaint wife (petitioner No.10) had filed Complaint Case No.1490 of 2011 against the husband (complainant of the case) and other accused persons.

Counsel for the petitioners has brought to the notice of this Court the statement on solemn affirmation and also examination of one witness, namely, Salimuddin on 9.11.2011 which are kept at Annexures-2 series. The complainant has stated in Solemn affirmation in para I to court question, that he was not present in the house at the time of occurrence. He has not seen the occurrence. The wife (petitioner no.10) had also filed maintenance case against him (the complainant). Another witness, Salimuddin, P.W.1 has stated in his statement that Fatima Khatoon is the wife of Mukhtar Alam. He does not know whether case has been filed by Fatima Khatoon. The wife of Mukhtar was only present at the time of occurrence.

In this manner, the statement on solemn affirmation of the complainant and single witness examined on his behalf during enquiry does not support the case of complainant. From the evidence it appears that the complainant was not present at the



time of occurrence. It further appears that the date of occurrence in the complaint petition has been mentioned as first week of March, 2011 and present complaint has been filed after delay of three months on 30.06.2011.

In the aforesaid circumstance, this Court is of the view that the instant case filed by the complainant is just in retaliation of the case filed by the wife (petitioner no.10) against her husband (complainant) vide Complaint Case No.1490 of 2011 under Sections 498 (A) and 494 of the I.P.C..

After perusal of the complaint petition and statement of witness recorded during enquiry, this Court finds that no ingredients of Section 147, 380 and 385 of the Indian Penal Code is made out.

Therefore, this Court, in the aforesaid facts and circumstances of the case, and also relying on the decisions as reported in 2009(3)SCC page 620 and 2013(2)PLJR571, as relied upon by the petitioner, is of the view that continuance of the proceeding against the wife and her family members is abuse of the process of Court, and it amounts to harassment of the petitioners.

In the aforesaid facts and circumstances, the order taking cognizance dated 16.05.2013 passed by the Judicial



Magistrate, 1st class, Katihar, in Complaint Case No.1591 of 2011
along with the entire proceeding is hereby quashed.

The Criminal Miscellaneous Petition is, therefore,
allowed.

(Sanjay Priya, J)

AnilKrSinha/-

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