

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.34251 of 2013

Arising Out of PS.Case No. -3 Year- 2013 Thana -MAHILA PS District-
EASTCHAMPARAN(MOTIHARI)

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1. Rajendra Prasad Son Of Late Kishundeo Ram R/O Village-Loharpatti, P.S.-Raxaul, Distt-East Champaran
2. Shobha Devi Wife Of Rajendra Prasad R/O Village-Loharpatti, P.S.-Raxaul, Distt-East Champaran
3. Chandra Shekhar 'Arun' Son Of Chandra Narayan R/O Village-Dhaka, P.S.-Dhaka, Distt-East Champaran
4. Smt Uma Arun Wife Of Chandra Shekhar 'Arun' R/O Village-Dhaka, P.S.-Dhaka, Distt-East Champaran
5. Vijay Kumar Son Of Late Shyam Chandra Prasad R/O Village-Rambagh, Muzaffarpur, P.S.-Town Muzaffarpur, Distt-Muzaffarpur
6. Kavita Kushwaha Wife Of Vijay Kumar R/O Village-Rambagh, Muzaffarpur, P.S.-Town Muzaffarpur, Distt-Muzaffarpur

.... Petitioner/s

Versus

1. The State Of Bihar
2. Manisha Devi Wife Of Kalyan Kumar R/O Village-Dhaka, Naya Tola, P.S.-Dhaka, Distt-East Champaran, At Present Late Ajay Kumar Sinha, Resident Of Mohalla-Chandmari, P.S.-Town, Distt-East Champaran

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Shivendra Kumar Sinha
For the Opposite Party/s : Mr. Ram Bachan Singh(App)

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CORAM: HONOURABLE MR. JUSTICE VINOD KUMAR SINHA
CAV ORDER
12-01-2017

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The petitioners have filed this application before this Hon'ble Court under Section 498(A), 34 of the Indian Penal Code and 3/4 of the dowry Prohibition Act for quashing the order dated 6.4.2013 passed by learned C.J.M., Motihari in Lady Motihari Police Station Case No.3 of 2013 by which the learned C.J.M., Motihari has taken cognizance for offence under Section 498 (A)



of the Indian Penal Code and ¾ of the Dowry Prohibition Act,

The case of the prosecution in short is that the second marriage of the informant was solemnized with the accused after death of her first husband, thereafter, he started torturing the informant on account of dowry and even she was ousted with her daughter. Both had got married on their own sweet-will. Earlier the husband of the informant had filed Matrimonial Case No.149 of 2012 for restitution of conjugal right and the same had been decided in favour of husband of the informant vide order dated 10.04.2013 and thereafter, she filed the present case. Later on the police after investigation submitted final form, not finding the case true, but learned Chief Judicial Magistrate had taken cognizance of the case, differing with the final form.

Now the petitioners had moved before the Hon'ble Court for quashing the order taking cognizance.

In this case, notices were issued to the Opposite Party No.2, who appeared in pursuance of that in this case.

It has been submitted on behalf of the petitioners that in the instant case, the whole family of the husband of the



deceased has been involved but no specific act has been alleged against the petitioners. It has further been submitted that the police after investigation of the case submitted final form in the present case but the learned C.J.M., Motihari has differed with the report of the police and took cognizance against the accused persons. Further submission of the learned counsel for the petitioners is that the husband of the informant is still ready to keep the informant but she is not ready to live with her, which will appear from the fact that he had filed Matrimonial Case No.149 of 2012 for restitution of conjugal right and the same has been decided in favour of the husband of the informant *ex parte* vide order dated 10.4.2013. Further submission of the learned counsel for the petitioners is that the informant has relation with another person as such she is not ready to live with her husband, however, in order to harass and put pressure on the petitioners, she has lodged a false and concocted case against the petitioners. It has also been submitted by the learned counsel for the petitioners that even the police after investigation submitted final form not finding the case true, but learned Chief Judicial Magistrate has taken cognizance without appreciating the fact that the petitioners had filed case for restitution of



conjugal right which has been decided in favour of the petitioner.

On the other hand, the learned counsel for the Opposite Party No.2 as well as the learned A.P.P. oppose the application for quashing of the order taking cognizance against the petitioners stating that there are materials available on the record against the petitioners and the cognizance has been taken by the learned Chief Judicial Magistrate, Motihari, after perusal of the case diary and finding materials against the petitioners. Further submission, as advanced by the learned counsel for the Opposite Party No.2, is that earlier these petitioners had also moved before the learned District and Sessions Judge in Criminal Revision No.112 of 2013, which was dismissed by the learned Session Judge, vide order dated 12.7.2013 and now after getting not successful before the learned Sessions Judge, the petitioners have filed the present application for quashing the order taking cognizance. It has also been submitted that there is nothing on record to show that there was any illegality in the order of the learned Sessions Judge or any error apparent on the record and only to defeat the bar imposed on second revision, the present application has been



filed in the garb of application under Section 482 of the Code of Criminal Procedure, which is fit to be dismissed.

Having heard both sides, it appears that the petitioners have filed a Revision Application before the Sessions Judge and the same was dismissed by the learned Sessions Judge and now the petitioners have filed the instant Quashing Application with the same matter and the same grievance in the garb of exercise of the inherent powers under Section 482 Cr.P.C. It is not so that the petitioner could not challenge the order under Section 482 Cr.P.C., however, it is well established that the power, under Section 482 Cr.P.C. in such cases, can be exercised in extremely exceptional circumstances, such as there being error apparent on the face of the record or the order being obviously illegal, however, nothing has been brought into the notice of this Court showing that there was any apparent error on the face of the record or the order is completely illegal.

Further from perusal of the record, it appears that the learned Chief Judicial Magistrate had passed the order taking cognizance after perusal of the case diary, finding the materials available on the record.



So far inherent power under Section 482 of the Code of Criminal Procedure is concerned, the same has to be exercised in exceptional cases, especially when there does not appear to be any error apparent on the record or order being perverse.

As such, I do not find any merit in the application, accordingly, the same is dismissed.

(Vinod Kumar Sinha, J)

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