

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.18516 of 2014

Arising Out of PS.Case No. -1570 Year- 2011 Thana -WEST CHAMPARAN COMPLAINT
District- WESTCHAMPARAN(BETTIAH)

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Ramjiyawan Chaudhary S/o Late Madan Chaudhary r/o Village - Paroraha, P.S.
Sathi, District - West Champaran

.... Petitioner

Versus

1. The State of Bihar
2. Bachhi Devi W/o Ramjiyawan Chaudhary, D/o Late Triveni Chaudhary at
present village - Bansgaon, P.S. Bharogunj, District - West Champaran

.... Opposite Parties

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Appearance :

For the Petitioner/s : Mr. Nagadeo Choubey, Advocate
For the Opposite Party/s : Mr. Amrendra Prasad, A.P.P.

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CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR

ORAL JUDGMENT

Date: 20-06-2017

This petition under Section 482 of the Code of Criminal procedure has been filed by the petitioner for setting aside the cognizance order dated 13.12.2012 passed in Complaint Case No.1570 of 2011 by Judicial Magistrate, 1st Class, Bettiah.

2. Learned counsel appearing on behalf of the petitioner submits that the allegations as levelled in the complaint do not constitute any prima facie offence or contains any ingredients of the offence under Section 498A of I.P.C. Moreover, the marriage was solemnized 30 years back. A daughter born out of this wedlock much earlier is now married and the mediation proceeding failed due to attitude of the wife; in fact she does not want to live with the husband



so levelles false allegation that the petitioner has had illicit relationship with his own sister-in-law (Bhabhi) and due to objection raised by her she is tortured.

3. The learned counsel relied on a decision of the Apex Court in the case of **Ghusabhai Raisangbhai Chorasiya & Ors. vrs. State of Gujarat** vide Cr. Appeal No.262 of 2009 and filed a photo copy of the judgment. Referring the decision it is submitted that husband intimacy with another would not amount to cruelty, but it must be of such a nature as is likely to drive the spouse to commit suicide.

4. Learned counsel appearing on behalf of the opposite party no.2 submits that she has been tortured by the husband from beginning of marital life for protesting illicit relationship with his Bhabhi, coupled with grudge she could not bear a mail child.

5. The reliance placed by the learned counsel for the petitioner on the said decision relates to the judgment passed by the Apex Court in Cr. Appeal where the evidence adduced before trial court was considered; relying on nature of evidence in that case the judgment was passed but in present case at hand the petitioner has challenged cognizance order.

6. I perused the record and allegation in the complaint is that she was married more than 30 years ago and only after lapse of



four years, the husband started torturing her, on account that only a girl child was born out of the wedlock and petitioner disliked protect of his wife regarding illicit relationship with his own sister-in-law.

7. The principle for interference in the criminal proceeding as broadly laid down by the Apex Court in the case of **State of Haryana Vrs. Bhajan Lal reported in A.I.R.1992 SC 604** are enumerated below but according to this judgment the power under inherent jurisdiction should be exercised sparingly that too in the rarest of rare case. The seven grounds are as follows:-

“ (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. Having considered rival submissions and materials on record, I find that not even any one of the grounds exists in the present case for interference in the cognizance order. Primarily the ground



taken by the petitioner is that the allegation as levelled in complaint do not constitute any ingredients of Section 498A of I.P.C. and second ground is that the case appears improbable in nature. The allegation is that complainant (wife) is being tortured mentally and physically by the petitioner for not bearing a male child and due to protest made for having illicit relationship with another woman, ultimately she was ousted from the matrimonial home in the year 2009, so in view of the definition of Section 498A of I.P.C. the allegations do constitute prima facie offence and in my view, there is no element of improbability in the case. So it is not a case of interference for setting aside the cognizance order.

8. Accordingly, this quashing application is dismissed.

(Arun Kumar, J)

N.H./-

AFR/NAFR	NAFR
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