

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.35952 of 2014

Arising Out of PS.Case No. -895 Year- 2012 Thana -SITAMARHI COMPLAINT CASE District-
SITAMARHI

- =====
1. Ram Preet Sah S/o Late Ram Avtar Sah
 2. Sanjay Kumar @ Sanjay Sah S/o Ram Preet Sah
 3. Ajay Kumar @ Ajay Sah S/o Ram Preet Sah
- All resident of village- Bhutahi, P.S.- Sonbarsa, District- Sitamarhi

.... Petitioner/s

Versus

1. The State of Bihar
2. Devaki Devi W/o Ram Krit Sah resident of village- Bhutahi, P.S.- Sonbarsa,
District- Sitamarhi

.... Opposite Party/s

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Appearance :

For the Petitioner/s	:	Mr. Ashhar Mustafa Mr. Murad Ashraf Mr. Ashish Kumar Ranjan
For the O.P. No. 2	:	Mr. Saroj Kumar
For the Opposite Party/s	:	Mr. Binod Kumar

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CORAM: HONOURABLE MR. JUSTICE SANJAY KUMAR

ORAL JUDGMENT

Date: 11-10-2017

This application under Section 482 of the Code of Criminal

Procedure has been filed to quash the order dated 07.07.2014 passed by the learned Judicial Magistrate, 1st Class, Sitamarhi in Complaint Case No. 895 of 2012 whereby and whereunder the learned Magistrate took cognizance against the petitioners for the offence under Sections 323, 354, 341 and 504 of the Indian Penal Code.

2. Heard the learned counsel for the petitioners, the learned counsel for the Opposite Party No. 2 and the learned APP for the State.

3. The Opposite Party No. 2 lodged an F.I.R. bearing Sonbarsa P.S. Case No. 116 of 2011 on 27.08.2011 alleging inter alia that on 20.08.2011 at about 4 P.M, in absence of her husband, these



petitioners entered into her house and brutally assaulted. They dragged her to their house and locked in a room. She has further alleged that the accused committed rape on her also. She has further alleged that her son had taken generator connection from the petitioner Nos. 2 and 3 and there was some dispute for payment of money. The accused persons had caused the occurrence on account of enmity and annoyance for non payment of dues amount. The matter was investigated and police submitted final form as case untrue vide police report dated 17.11.2011. The Opposite Party No. 2 filed a protest petition on the basis of which a separate complaint case was registered. The complainant and few witnesses were examined and the court below finding prima facie case took cognizance against the petitioners as stated above.

4. It has been submitted that the present case has been lodged in order to harass the petitioners wreaking vengeance against the petitioners. The son of the informant had attempted to commit rape on the minor daughter of the petitioner No. 2 on 07.08.2011 for which the petitioner No. 2 lodged an F.I.R. bearing Sonbarsa P.S. Case No. 114 of 2011 dated 23.08.2011 against him under Sections 354, 376/511 of the Indian Penal Code. After investigation, police submitted charge-sheet against the son of the Opposite Party No. 2 and the case is pending for trial. After institution of criminal case against her son, the Opposite Party No. 2 lodged F.I.R. with false and



frivolous allegation. The learned counsel for the petitioners submits that there are major contradictions in the statement of the complainant and her witnesses on the point of assault. The petitioner Nos. 2 and 3 are sons of the Petitioner No. 1 and it does not appear believable that the father and the sons would indulge themselves together to commit such immoral crime. The learned Magistrate has passed the impugned order without applying judicial mind and so, the impugned order is fit to be quashed.

5. The learned counsel for the Opposite Party No. 2 as well as the learned A.P.P. for the State opposed the submission.

6. On perusal of documents on record, I find that the petitioner No. 2 had lodged Sonbarsa P.S. Case No. 114 of 2011 on 23.08.2011 against the son of the Opposite Party No. 2 for the offence under Sections 354 and 376/511 of the Indian Penal Code and after four days of institution of the said case, the Opposite Party No. 2 filed Sonbarsa P.S. Case No. 116 of 2011. In the F.I.R., she has alleged that all the three petitioners dragged her and locked in a room. The said occurrence was witnessed by several people but she has not disclosed the name of any of the witnesses in the F.I.R. although, it was lodged after one week of the alleged occurrence. The complainant has cited the name of her husband, son and some of her villagers. The learned counsel for the petitioners has filed supplementary affidavit and annexed the statement of the witnesses recorded in course of enquiry.



The husband and one of her villager who have been examined as witness Nos. 2 and 1 have denied their presence at the time of alleged occurrence. The complainant in her court question has stated that the petitioner No. 2 is her nephew. She further stated that none of the witnesses had seen the occurrence in question. In course of enquiry, the police did not find support from the statement of witnesses and accordingly, submitted final form as case untrue. The materials on record shows that the present case has been lodged by the Opposite Party No. 2 after institution of criminal case against her son wreaking vengeance on the petitioners. The present case is squarely covered by the guidelines given by Hon'ble Apex Court for quashing the criminal prosecution as reported in the State of Haryana & others Vs. Bhajan Lal (1992 Supp(1) SCC 335).

7. Having regard to the materials on record the criminal prosecution of these petitioners appears to be an abuse of process of Court. The order dated 07.07.2014 passed by the learned Judicial Magistrate, 1st Class, Sitamarhi in Complaint Case No. 895 of 2012 taking cognizance against the petitioners is hereby quashed and this application is allowed.

(Sanjay Kumar, J)

ajay gupta/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	18.10.2017
Transmission Date	18.10.2017

