

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.26251 of 2012

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1. Gauri Shankar Sao son of Late Chandeshwari Sao
 2. Suwidhiya Devi wife of Gauri Shankar Sao
 3. Gyani Sao @ geyani Sao son of Gauri Shankar Sao Petitioner/s
 4. Reena Devi wife of Rajendra Sao, daughter of Gauri Shankar Sao, resident of Sultanpur, Dhobiya Tola, P.S. Mokama, Patna, Dariyapur, P.S. Hathidah, Patna, Bihar, at present Bouta Pent, P.S. Bouta, Mandi, Jalandhar, City Punjab.
 5. Damodar Sao son of Bino Sao, resident of Dariyapur, P.S. Hathidah, Patna.

1. State of Bihar
2. Rajendra Sao son of Bino Sao,

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Ranjeet Kumar
Mr. Akash Keshav
For the State : Mr. Jharkhandi Upadhaya, A.P.P.
For the Opposite Party/s : None.

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CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR
ORAL ORDER

11 24-04-2017 This quashing petition has been filed by the petitioners against the order dated 3.9.2010 passed by the learned Additional Chief Judicial Magistrate, Barh, in Complaint Case No.439(C) of 2010 whereby cognizance under Section 379/34 of the Indian Penal Code has been taken against the petitioners.

2. A brief fact constituting allegation in the complaint case is that Reena Devi, and the complainant out of their wed lock have got two daughters and one son, but for last



three years the relationship between husband and the wife became strained and at the instigation of her parents the wife left matrimonial home and started living along with her children with her parents at Jalandhar, wherein the complainant, a labourer lives in Delhi to earn his livelihood. Further allegation is that the dispute arose between the wife and the husband in the year 2008 and wife had committed theft of Rs.31,000/- cash, jewellery, Pass Book of Bank Account, paper of sale deed to resolve it for panchayati was held at complainant's house on 01.07.2010, and all accused persons participated and it was resolved that his wife along with children would live with the complainant and Rs.31,000/- would be deposited in the name of her elder daughter and jewellery will be with Reena Devi which would be given to daughter at the time of their marriage, other articles would be returned back to the complainant. In the said night after having dinner all were sleeping at the top of the roof except his wife and her mother, complainant woke up next morning but found himself alone sleeping there, he came down stairs but found the door open and all accused persons had already left their house and also took away his one attache in which clothes and Rs.25,500/- were



kept. In course of search some witnesses told him that in the morning at 4 O'clock they saw accused persons going away with attaché.

3. Learned counsel appearing on behalf of the petitioners submits that petitioner no.4, Reena Devi, is the wife of the complainant, whereas petitioners no.1 to 3 are father-in-law, mother-in-law and brother-in-law and petitioner no.5 is the uncle of the wife. Marriage of the complainant was solemnized with petitioner no.4 in the year 1998, but by passage of time matrimonial relationship became strained as the husband was not maintaining his wife and children, therefore, she started living with her parents. So, this false complaint was filed accusing the wife, father-in-law, mother-in-law, brother –in-law and others of committing theft of one suitcase. Moreover the complainant is not witness as per his own admission. Subsequently, wife filed a case under Section 498A of the Indian Penal Code as well as maintenance case under Section 125 of Cr.P.C. seeking maintenance for her and children and copies of the petitions have been filed with the supplementary affidavit.

4. In this case earlier notice was issued to



O.P.No.2 which was received by the brother of O.P.No.2. So it deemed to be validly served but none appears on behalf of O.P.No.2.

5. Learned A.P.P. supports the impugned order.

6. Considering the submissions and looking at the allegations alleged in the complaint as well as other circumstances mentioned therein, it appears that the matrimonial relationship of the complainant with his wife, accused petitioner no.4 was strained prior to institution of this case as she was living with her parents along with her children subsequently also filed a case against her husband under Section 498(A) of I.P.C.

7. The complainant has leveled allegation of theft against his wife and in-laws, alleging they left his house with one suitcase wherein some clothes and money was kept but himself has not seen them taking away suit case, no details of suitcase and items kept in it is mentioned. A wife leaving her husband house with a suitcase containing cloths and little amount of money does not come within purview of the definition of theft. The allegation appears absurd and improbable.

8. In view of the aforesaid facts and



circumstances, the allegation appears also malicious in nature. So order dated 3.9.2010 taking cognizance and further subsequent criminal proceeding in the case is quashed.

9. In the result, the instant petition is allowed.

(Arun Kumar, J)

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