

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.392 of 2013

Arising Out of Compliant Case No. -32 Year- 2012 Thana –Ariari District- -Sheikhpura

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1. Nasrin Fatma D/o Late Serajuddin, resident of mohalla- Nizam Manzil, Goriyatoli, Station Road, P.S.- Kotwali, Distt.- Patna.
 2. Md. Nasimuddin S/o Late Md. Ahmad Hussain, resident of mohalla- Nizam Manzil, Goriyatoli, Station Road, P.S.- Kotwali, Distt.- Patna
 3. Shama Afroj W/O Nasimuddin @ Md. Nasimuddin, resident of mohalla- Nizam Manzil, Goriyatoli, Station Road, P.S.- Kotwali, Distt.- Patna
 4. Shamimun Nisha W/o Late Serajuddin, resident of mohalla- Nizam Manzil, Goriyatoli, Station Road, P.S.- Kotwali, Distt.- Patna
 5. Ijazuddin @ Syed Ejazuddin S/o Late Serajuddin, resident of mohalla- Nizam Manzil, Goriyatoli, Station Road, P.S.- Kotwali, Distt.- Patna
 6. Imtiyajuddin @ Syed Imtiyajuddin S/o Late Serajuddin, resident of mohalla- Nizam Manzil, Goriyatoli, Station Road, P.S.- Kotwali, Distt.- Patna
 7. Raushan Fatma @ Roshan Fatma W/O Imtiyajuddin, resident of mohalla- Nizam Manzil, Goriyatoli, Station Road, P.S.- Kotwali, Distt.- Patna.

.... Petitioner/s

Versus

1. The State of Bihar.
2. Syed Mehrul Hoda @ Okaish S/o Late Ashraful Hoda, resident of village- Hussainabad, P.S.- Ariari, Distt.- Shekhpura.

.... Opposite Party/s

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Appearance :

For the Petitioner/s : M/s Kameshwar Kumar and Ashok Kumar, Advs.
For the Opposite Party/s : Mr. Panchanand Pandit, APP

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CORAM: HONOURABLE MR. JUSTICE SANJAY KUMAR

ORAL JUDGMENT

Date: 06-09-2017

1. Heard both sides and perused the record.

2. This criminal miscellaneous application under

section 482 of the Code of Criminal Procedure has been filed to quash the order dated 18.05.2012 passed by the learned Chief Judicial Magistrate, Sheikhpura in Complaint Case No. 32(c)/2012 (arising out of Ariyari Police Station Case No. 133 of 2010) whereby and



whereunder the learned Magistrate finding *prima facie* case against the petitioners, took cognizance under sections 147, 448, 341, 323, 504 and 379 of the Indian Penal Code.

3. The opposite party no. 2, who is husband of petitioner no. 1, lodged an F.I.R. with the S.H.O. of Ariyari Police Station, vide Ariyari Police Station Case No. 133 of 2010, against the petitioners alleging *inter alia* that they all, on 22.08.2011 at about 11:00 A.M., came at his house and abused and brutally assaulted him. They snatched gold chain from his possession and took away ornaments and cash amount of Rs. 10,000/- as well as other articles. The case was investigated by Police and Final Form was submitted on 22.08.2010 as case untrue. The Police however recommended to initiate a proceeding under sections 182 and 211 of the Indian Penal Code against the opposite party no. 2. Thereafter, a protest petition was filed and on enquiry, the learned Magistrate found *prima facie* case true for the offence in question and accordingly, summoned the petitioners.

4. The learned counsel for the petitioners submits that the petitioner no. 1 is wife of informant and other petitioners are her family members related as father, mother, brother, brother-in-law and sister-in-law. The petitioner no. 1 is presently aged about 62 years. She was married with the opposite party no. 2 in the year 1987 and



from the said wedlock, she has been blessed with three children. The opposite party no. 2 started torturing the petitioner no. 1 and she was ousted by the opposite party no. 2. Thereafter, she came at her father's place along with her children and started residing there. The opposite party no. 2 refused to maintain the petitioner no. 1 and her children and so, she filed a maintenance case. The opposite party no. 2 had filed a Matrimonial Case no. 34 of 2009 before the Principal Judge, Family Court, Sheikhpura. The petitioner no. 1 has filed M.J.C. No. 1207 of 2010 before this Court, which after hearing, was allowed on 16.08.2011 and the Matrimonial Case no. 34 of 2009 filed by her husband (O.P. No. 2) was transferred to the Court of Principal Judge, Family, Court, Patna. The husband left taking interest and the said case was dismissed on 22.02.2017. It has been further submitted that the petitioners are resident of Patna whereas the opposite party no. 2 is resident of Sheikhpura situated at a distance of more than 120 km. The allegation levelled in the complaint petition, is improbable as it is not supposed or expected that the wife and her family members would go at the place of opposite party no. 2 to commit such crime. The Police after investigation, found case untrue and recommended for prosecuting the opposite party no. 2 for the offences under sections 182 and 211 of the Indian Penal Code. The learned Magistrate without applying judicial mind, has taken cognizance, which is not legally



sustainable and is fit to be quashed.

5. On the other hand, the learned counsel for the opposite party no. 2 as well as learned Additional Public Prosecutor vehemently opposed the submission.

6. On perusal of complaint petition and the documents enclosed therewith, I find that the petitioner no. 1 is deserted wife of opposite party no. 2. She is residing along with her children at her father's place at Patna. The other petitioners are parents, brother and other family members of petitioner no.1 The allegation made in the FIR on its face value appears improbable. There are contradictions also in the statement of complainant and other witnesses examined at the time of enquiry.

7. In **State of Haryana v. Bhajan Lal**, it was, inter alia observed as follows: (SCC pp. 378-79, 102): 1992 Supp (1) SCC 335 : 1992 SCC (Cri) 426 : AIR 1992 SC 604.

“102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of



justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised:

(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. In view of above principles laid down by the



Hon’ble Supreme Court as discussed above, I find that criminal prosecution of this petitioner would be an abuse of process of Court. As such, this criminal miscellaneous application is allowed and the order dated 18.05.2012 passed in Complaint Case No. 32(c)/2012 arising out of Ariyari Police Station Case No. 133 of 2010 as well as the criminal prosecution of these petitioners on that basis, is hereby quashed.

(Sanjay Kumar, J)

Mahesh/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	24.09.2017
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