

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.44935 of 2013

Arising Out of PS.Case No. -null Year- null Thana -null District- PATNA

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1. Ashwini Kumar Pathak @ Ashwani Kr. Pathak, Son of Nand Kumar Pathak, resident of Village- Dhanawa, Police Station- Bodh Gaya, District- Gaya.

2. Nand Kumar Pathak, Son of Late Kameshwar Pathak, resident of Village- Dhanawa, Police Station- Bodh Gaya, District- Gaya.

3. Kalindi Pathak, Wife of Nand Kumar Pathak, resident of Village- Dhanawa, Police Station- Bodh Gaya, District- Gaya.

.... Petitioners

Versus

1. The State of Bihar.

2. Mamta Pathak, Wife of Ashwini Kumar Pathak and daughter of Sri Bisundeo Pathak, resident of Village/Mohalla- Electricity Board Colony, Rajbanshi Nagar, Police Station- Shastri Nagar, District- Patna.

.... Opposite Parties

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Appearance :

For the Petitioners : Mr. Uday Narayan Singh, Advocate.

For the State : Mr. M. K. Nirala, A.P.P.

For the Complainant : Mr. Rajendra Singh @ Shastrijee, Advocate.

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CORAM: HONOURABLE MR. JUSTICE SUDHIR SINGH

ORAL JUDGMENT

Date: 11-01-2017

Heard learned counsels for the petitioners, complainant and learned counsel for the State.

2. The present application has been filed by the petitioners for quashing the order dated 20.06.2013, passed by the learned S.D.J.M., Patna, in connection with Complaint Case No. 3159(C) of 2012, whereby after taking cognizance under Sections 498(A) of the I.P.C. and 4 of the D.P. Act, the process has been issued against the petitioners.

3. The prosecution case, in brief, is that the complainant



was married with the petitioner no. 1 on 29.04.2007 as per Hindu rites and Customs at Patna. Her father has given cash of Rs. 1,50,000/-, one car, ornaments, utensils and other house hold articles as gifts but the accused persons were not satisfied with the gifts and they started pressurising for demand of Rs. 5,00,000/-. Due to non-fulfilment of the said amount, the complainant was subjected to torture mentally and physically by various means. She came back at her father's house on 19.06.2007 on account of pregnancy and she gave birth one female child then the accused persons were not happy. Her father held several Panchayatis for restoration of matrimonial relation between the complainant and petitioner no. 1. Thereafter, she again gave birth second female child but the accused persons were not happy and started torturing and one day the accused persons with his other family members threatened the complainant. Therefore, she left the pairvi in Matrimonial Case No. 159 of 2007 under Section 9 of the Hindu Marriage Act filed by petitioner no. 1 before the Family Court, Gaya. The accused persons with other family members came at her parents' home and assaulted the complainant and her parents and took away cash of Rs. 15,000/-, clothes and gold ornaments. Hence, the complainant filed the present complaint case.

4. It has been submitted on behalf of learned counsel for the petitioners that the present case is a malafide prosecution. The



petitioner no. 1 is ready to keep the complainant with him with all due respect. A petition for restitution of conjugal life has also been filed on behalf of the petitioner no. 1 in which decree has been passed in favour of petitioner no. 1. After the decree being passed in restitution of conjugal life, the present complaint case has been filed.

5. It has been submitted on behalf of learned counsels for the complainant and the State that there is specific allegation of torture alleged against the petitioners and prima-facie case is made out for the offences under Sections 498(A) of the I.P.C. and 4 of the D.P. Act.

6. This application has been filed under Section 482 of the Code of Criminal Procedure 1973, which envisages three circumstances in which inherent powers can be exercised.

- (i) to give effect to any order passed or made under the Code;
- (ii) to prevent abuse of the process of any Court; and
- (iii) to secure the ends of justice.

Thus the inherent jurisdiction of this Court can be exercised to quash criminal proceedings in an appropriate case either to prevent abuse of process of any Court or otherwise to secure the ends of justice. Ordinarily, Criminal proceedings instituted against an accused person, must be tried under the provisions of the Code, and this Court should be reluctant to interfere with the said proceedings at an interlocutory stage.



7. It is, however, not possible or expedient to lay down any inflexible rule, which would govern the exercise of this inherent jurisdiction but by way of illustrations, some categories of cases, may be indicated, where the inherent jurisdiction can and should be exercised for quashing the criminal proceedings:

(1)Where the allegations made in the F.I.R. 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 F.I.R. and other materials, if any, accompanying the F.I.R. 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 F.I.R. or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out case against the accused.

(4)Where the allegations in the F.I.R. 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 F.I.R. or complaint are so absurd and inherently improbable on the basis of which no prudent man 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 grievances of the aggrieved party.

(7)Where a criminal proceeding is manifestly accompanied with *malafides* and/or where the proceeding is maliciously instituted with an ulterior motive of wreaking vengeance on the accused and with a view to spite him due to personal and private grudge.

8. It is worth quoting, the observations of PANDIAN, J. in State of Haryana Vs Bhajanlal, which lay down the limitations of inherent power of this Court, saved under Section 482 of the Code of Criminal Procedure.

“The Power of Quashing a Criminal proceeding should be exercised very sparingly and with circumspection and that too in the rarest of rare cases; that the Court will not be justified in embarking upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the F.I.R. or the Complaint and that the extraordinary or inherent powers do not confer any arbitrary jurisdiction on the Court to act according to it's whim or Caprice.”

9. In my view, inherent powers are in the nature of extraordinary powers to be used sparingly for achieving the object



mentioned in Section 482 of the Code, in cases where there is no express provision empowering this Court to achieve the said object. The power is discretionary and should be exercised for *ex debito justitiae*. Purpose behind saving of inherent power is that no legislature can foresee all possible contingencies or eventualities that may arise in future and to meet with such situations, inherent power can be invoked by this Court.

10. While exercising jurisdiction under Section 482, this Court should not assume the role of a trial court and embark upon an enquiry as to the reliability of evidence and sustainability of accusation on a reasonable appreciation of such evidence.

11. Considering the aforesaid facts and circumstances, I find no merit in the present case. Accordingly, the same is dismissed.

12. The stay granted to the petitioners vide order dated 24.10.2013, stands vacated.

U.K./-

(Sudhir Singh, J)

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	02.02.2017.
Transmission Date	

