

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.16192 of 2014

Arising Out of PS. Case No.-56 Year-2011 Thana- MOTIHARI TOWN District- East
Champaran

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1. Abhishek Kumar Singh @ Abhishek Kumar S/O Bharat Singh
 2. Bharat Singh S/O Late Ram Bachchan Singh
 3. Radhika Devi W/O Bharat Singh
 4. Seema Kumari D/O Bharat Singh All Are Resident Of Village
Horila Chhapra, Police Station Malahi, District East Champaran.

... .. Petitioner/s

Versus

1. The State Of Bihar.
2. Reena Devi D/O Dashrath Singh Resident Of Mohalla Balwanawa, Police
Station Town Motihari, District East Champaran.

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Anil Kumar

For the Opposite Party/s : Mr. C.Sen Pd.Singh(App)

CORAM: HONOURABLE MR. JUSTICE ARVIND SRIVASTAVA
C.A.V. JUDGMENT

Date : 11-04-2018

Heard learned counsels for the parties.

Petitioners, by means of this application under
section 482 of the Code of Criminal Procedure, have invoked
the inherent jurisdiction of this Court with prayer to quash the
order dated 16.01.2012, passed by the learned Chief Judicial
Magistrate, East Champaran at Motihari in connection with



Town (Motihari) P.S. Case No. 56 of 2011, whereby and whereunder cognizance has been taken against the petitioners for the offence under sections 498A, 307 of the Indian Penal Code and sections 3/4 of the Dowry Prohibition Act.

It is alleged that on giving gifts by the father of the informant as per capacity, the date of marriage of the informant with petitioner no. 1 was fixed. But, just before marriage, further demand of rupees two lakhs cash was made. Father of the informant gave Rs. 50,000/- and on assurance that the rest amount will be given after marriage, marriage was solemnized. After marriage, the accused persons started torturing the informant. On 30.12.2010, the accused persons tied the informant and assaulted her with fists and slaps. Petitioner no. 2 ordered to kill her upon which the petitioner no.3 brought kerosene oil and gave in the hand of petitioner no. 4. Petitioner no. 4 after opening the same handed over to co-accused Amresh Singh, who sprinkled the same on the body of the informant. Co-accused Sanjay Singh gave match box to petitioner no. 1 for setting her body on fire. In the meantime, informant raised alarm on which neighbours came and some how her life could be saved.

Learned counsel appearing for the petitioners



submits that the present case is a bundle of false allegations and a legal engineering for making a serious case under the Indian Penal code as also the Dowry Prohibition Act. There is neither any injury report on the record nor any evidence to substantiate that the accused persons either assaulted the informant or tried to set her on fire. Learned counsel further submits that petitioner is fully complying the order of this Court dated 25.10.2011 passed in Cr. Misc. No. 35365 of 2011 and is paying Rs. 2000/- per month to the informant which would be evident from the bank receipts contained in Annexure-4. Besides the present case, opposite party no. 2 has also filed D.V. Case No. 06 of 2011, Maintenance Case No. 108 of 2011 and Town Motihari P.S. Case No. 108 of 2017. As a matter of fact, the opposite party no. 2 is an undisciplined lady and she always used to misbehave with her in-laws. In course of hearing of Divorce Case No. 285 of 2010, she even assaulted the petitioner with her footwear in open Court at Family Court, Motihari. In that connection, petitioner also filed application before the Court below for his protection. The counsel of the petitioner was also threatened by the opposite party no. 2 and her associates. He has also filed an application in that respect in the Court below. Learned counsel has brought on record the copies of the



aforesaid applications and the order dated 17.11.2011 as Annexure-5 (series) to the present application. It is lastly contended that the sister of the petitioner no. 1, who is a handicapped aged more than 40 years unmarried lady, has been made accused in the present case, which shows the falsity of the allegations levelled. In the background of the above submissions, learned counsel prays for quashing of the order taking cognizance.

Considering the materials available on record and the facts and circumstances of the case, this Court finds substance in the submissions advanced on behalf of the petitioner and agrees with the same. Opposite party no. 2 has filed the present Complaint case against the accused persons under sections 498A and 307 of the Indian Penal Code and section 3/4 of the Dowry Prohibition Act without there being any Injury Report., which was later on forwarded to the police under section 156(3) Cr. P.C. where it was registered as Town Motihari P.S. Case No. 56 of 2011. After investigation, police submitted charge-sheet against four accused persons i.e. the present petitioners only under section 498A I.P.C.

Learned Magistrate differing with the police report took cognizance against all nine accused persons under



sections 498A & 307 of the Indian Penal Code and Sections 3/4 of the Dowry Prohibition Act. Code of Criminal Procedure gives the Magistrate the power of differing with the Police report, but the Magistrate has to give reasons as to what are the materials in the diary on basis of which he has differed with the Police Report. Apparently, the present case has been registered under section 307 IPC without there being any Injury Report. The part of the Complaint which relates to Section 307 I.P.C. is *prima facie* an absurd story. It has been alleged that accused persons caught the informant and tied her. Thereafter, petitioner nos. 3 & 4 with the help of Babli Devi (accused no. 7 in complaint) tied her with the leg of Chowki and all started assaulting her with fists and slaps. Petitioner no. 2 ordered to kill her and asked petitioner no. 3 to bring kerosene oil upon which petitioner no. 3 brought kerosene oil and gave in the hand of petitioner no. 4 who after opening the gallon handed over the same to co-accused Amresh Singh (accused no. 6 in complaint), who sprinkled the same on the body of the informant. Accused Sanjay Singh (accused no. 8 in complaint) gave match box to petitioner no. 1 and asked him to kill the informant by setting her on fire. The allegations on the face of it, in absence of any injury or any specific material, shows how tactically on



allegations of committing a crime entire family members are implicated. The part of the Complaint which relates to Section 307 I.P.C. is *prima facie* an absurd story.

Further, in the present case in absence of any Injury Report learned Magistrate without referring to any specific paragraph of the case diary wherein he found materials against the accused persons has differed with the police report and has taken cognizance of the offence under section 307 of the Indian Penal Code, which is a misuse of the process of the Court. Accordingly, the order dated 16.01.2012, passed by the learned Chief Judicial Magistrate, East Champaran at Motihari in connection with Town (Motihari) P.S. Case No. 56 of 2011, whereby and whereunder cognizance has been taken against the petitioners for the offence under sections 498A, 307 of the Indian Penal Code and sections 3/4 of the Dowry Prohibition Act is, hereby, quashed.

The application, thus, stands allowed.

(Arvind Srivastava, J)

mcv/-

AFR/NAFR	NAFR
CAV DATE	05.12.2017
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