

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.13913 of 2012

-
-
1. Jai Narayan Singh S/O Late Rameshwar Singh,
 2. Daulato Devi W/O Jai Narayan Singh
 3. Kamlesh Singh S/O Jai Narayan Singh
 4. Meena Devi D/O Jai Narayan Singh
 5. Sonu Kumar S/O Jai Narayan Singh
 6. Kumari Devi D/O Jai Narayan Singh
 7. Poonam Devi D/O Jai Narayan Singh, all resident Of Mohalla-Bajar Samiti, Adarsh Colony, P.S.- Ara (NAWADA), District-Bhojpur.

... .. Petitioner/s

Versus

1. The State Of Bihar
2. Abha Devi, wife of Sri Kamlesh Singh, resdient of Mohalla Bazar Samiti, Adarsh Colony, P.S. Ara (Nawada), District- Bhojpur, presently residing at Mohalla Chandwa Tola, P.S. Ara (Nawada) District- Bhojpur

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Ravindra Kumar
For the Opposite Party/s : Mr. Mayanand Jha(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 29.09.2011, passed by the learned Judicial Magistrate, 1st Class, Bhojpur at Ara in connection with Complaint Case No. 112 C of 2010, whereby and whereunder cognizance has been taken against the petitioners for the offence under section 498A of the Indian Penal Code and further for quashing the entire criminal proceeding against the petitioners.



The facts of the case, in short, is that initially the mother-in-law of the complainant filed Complaint Case No. 1440 of 2008 on 24.08.2008 against the complainant and her brothers for the offences punishable under sections 323, 324, 341 and 379/34 of the Indian Penal code, which was subsequently registered as Ara Nawada P.S. Case No. 195 of 2008 (Annexure-2). The police upon investigation has submitted charge sheet and the matter is pending consideration before the court below. Thereafter, complainant filed Complainant Case No. 1493 of 2008 which was also subsequently registered as Ara Nawada P.S. Case No. 202 of 2008. The police upon investigation submitted final form on 31.07.2009 (Annexure-5), holding the allegations not true against the accused. Thereafter during the pendency of the police case registered at the instance of the complainant was pending investigation, the present protest cum-complaint case came to be instituted by the complainant.

The learned Judicial Magistrate, 1st Class upon holding an enquiry under Section 202 of the Code and upon consideration of the evidence given by the witnesses, led by the complainant as also her own statement, dismissed the complaint case under section 203 of the Code vide order dated 03.09.2010.



The complainant being aggrieved by the aforesaid order filed Cr. Revision No. 162 of 2010 and the learned Sessions Judge, Bhojpur at Ara by order dated 09.06.2011 was pleased to set aside the order dated 03.09.2010 passed by the Judicial Magistrate, 1st Class and remitted the matter back for its fresh consideration in accordance with law.

Learned counsel appearing for the petitioners submits that the present prosecution is a malicious prosecution as the same has been launched after filing of the complaint case by the present petitioners. Besides the above, learned counsel submits that the matter having been remanded by the revisional Court, the present order was passed by the learned Judicial Magistrate, 1st Class, Bhojpur at Ara taking cognizance of the offences punishable under section 498A of the Indian Penal Code on the basis of same materials and on appreciation of the same evidence which earlier formed the basis for dismissal of the complaint under section 203 of the Code. In the background of the aforesaid submissions, learned counsel submits that the continuation of the present prosecution would be an abuse of the process of the Court.

Considering the facts and circumstances of the case, the materials available on record and the submissions



advanced on behalf of the parties, this Court finds substance in the submissions advanced on behalf of the petitioner and agrees with the same. The present case has been filed by the complainant after filing of the case by the mother-in-law (petitioner no. 2) which in terms of the judgment rendered by the Hon'ble Supreme Court in the case of *State of Haryana Vs. Bhajan Lal*, reported in *1992 Supp (1) SCC 335* is a malicious prosecution. Relevant extract of paragraph 102 of the aforesaid judgment is quoted hereinbelow for ready reference :

“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) – (6)

(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.”

In view of the discussions made above, the entire criminal proceeding in connection with Complaint Case No. 112 C of 2010 including the order taking cognizance dated dated 29.09.2011, passed by the learned Judicial Magistrate, 1st Class, Bhojpur at Ara in connection with Complaint Case No. 112 C of 2010, is, hereby, quashed.

The application, accordingly, stands allowed.

(Arvind Srivastava, J)

mcv/-

AFR/NAFR	NAFR
CAV DATE	05.12.2017
Uploading Date	12.04.2018
Transmission Date	12.04.2018

