

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.57105 of 2015

Arising Out of PS. Case No.-255 Year-2011 Thana- ROHTAS COMPLAINT CASE District-
Rohtas

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1. Suresh Prasad Srivastava son of Late Narvadeshwar Prasad
 2. Kamlesh Prasad Srivastava son of Suresh Prasad Srivastava
 3. Shailesh Prasad @ Sonu S/o Suresh Prasad Srivastava
 4. Shakuntala Devi W/o Suresh Prasad Srivastava All resident of village- Jethwar, P.S.- Tarari, District- Bhojpur
 5. Sarita Devi wife of Durgesh Prasad Srivastava,
 6. Durgesh Prasad Srivastava, S/o Late Jagarnath Lal, Both resident of village- Meari, P.S.- Baghela, District- Rohtas

... .. Petitioner/s

Versus

1. The State of Bihar
2. Rakesh Kumar Srivastava son of Kanhaiya Lal resident of village- Ladui Bishanpura, P.S.- Kargahar, District- Rohtas. Presently residing at Gaurakshni, Ward No. 7, Sasaram, District- Rohtas

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Dharendra Singh
For the Opposite Party/s : Mr. Nand Kishore Prasad, APP

CORAM: HONOURABLE THE CHIEF JUSTICE
ORAL JUDGMENT

Date : 04-07-2018

Challenging the order dated 01.09.2015 passed by the 4th

Additional District & Sessions Judge, Sasaram, Rohtas in Criminal Revision No. 373 of 2011 and the order dated 05.11.2011 passed by the Judicial Magistrate 1st Class, Rohtas at Sasaram taking cognizance in complaint Case No. 255(C) of 2011/Trial No. 2692 of 2011 for an offence under Section 323 and 380 of the Indian Penal Code, this application has been filed under Section 482 of the Code of Criminal Procedure for quashing the proceeding.



Respondent no. 2, the complainant, had filed the complaint in the court of Judicial Magistrate, Sasaram and it was the case that he was married with the daughter of petitioner no.1 on 15.08.2010 and all the petitioners came to his house on 15.08.2010 and wanted to take him to his sasural to live with his wife in his sasural. It is the case of the complainant that he was not willing to live in the sasural and, therefore, his wife was taken away by force. On 28.11.2010 when the complainant went to his sasurar for bringing back his wife and requested her to come it is said that she did not come and thereafter on 07.03.2011 all the petitioners quarreled with the parents of the complainant and thereafter it is said that they initiated proceedings against him under Section 498A IPC and Section 3/4 of the Dowry Prohibition Act and the cases are under investigation. However, it is the grievance of the complainant that all the petitioners came to his house, assaulted him, threatened him and therefore he lodged the complaint which has been registered.

Having heard learned counsel for the parties and on going through the body of the complaint and the statement of the complaint it is seen that the incident is said to have taken place initially on 15.08.2010 and thereafter on 07.03.2011. It is alleged that they came to his house, assaulted his parents, he himself,



abused him and took away twenty five thousand rupees from his house and left. It is surprising that the incident is said to have taken place at 5 P.M. on 28.11.2010 and thereafter again on 30th November 2010. But between 28.11.2010 and 30.11.2010 till the filing the complaint on 08.03.2011 there is no FIR lodged, complaint or any sort of grievance raised. Thereafter, when the incident is said to have taken place on 07.03.2011 at 6 P.M. again no FIR was lodged. Only a bare statement is made that the police has not registered the FIR and therefore the complaint was filed on the next day, i.e. 08.03.2011. That apart, after narrating various incidents in Paragraph-6 only bald allegations are made with regard to assault and carrying the money. There is no specific averment. On the contrary, it is seen from the record that the petitioner's daughter who is the wife of the complainant has already initiated proceeding against him under Section 498A IPC and 3 / 4 of the Dowry Prohibition Act. That apart, in the complaint and from the order-sheet available on the cord it is seen that 05.11.2011 the complainant Rakesh Kumar Srivastava was only examined and there is no statement of any other witness available on record in support of the contention. It is the case of the petitioners that they have been falsely implicated in the matter.



The question is can this Court in a proceeding under Section 482 CrPC interfere and quash the proceeding. The principle for exercising the inherent power of this Court has been laid down in the case of ***Gian Singh vs. State of Punjab [(2012) 10 SCC 303]*** wherein it has been held that the inherent power available to this Court has no statutory limitation but the power has to be exercised to secure the ends of justice to prevent the abuse of process of any court and to ensure that nobody is dealt with in a manner not permissible under law. Similarly, in the case of ***Minu Kumari vs. State of Bihar [(2006) 4 SCC 354]*** the principle laid down is that if the process of law is misused and if on a bare reading of the complaint it is seen that no offence is made out under Section 482 CrPC power can be exercised for quashing the same. In the case of ***HMT Watches Limited vs. M A Abida [(2015) 11 SCC 776]*** it has been laid down by the Supreme Court that the power is of wide plenitude but it has to be exercised with great deal of caution and not merely on the asking. The defence of the accused need not be examined and interference made but only on a bare reading of the complaint if the offence is made out or if a case of misuse of the process of law is established interference can be made.



In this case, the complaint in question is available on record. Statement of the complainant Rakesh Kumar Srivastava is also available on record. From Paragraphs -1 to 4 the complainant speaks about his marriage and his wife staying in her house and refusing to come with him. Thereafter, in Paragraph-5, he says that on 15.08.2010 the petitioners came to his house at 5 P.M. and by use of force made him to sign on a non-judicial stamp paper. Now, if these incidents had taken place on 15.08.2010 it is surprising that there is no complaint, lodging of FIR or any grievance made to any person in any manner whatsoever. Thereafter, in Paragraph-6 of the complaint, in a very vague and general manner he speaks about the petitioners coming to him on 30th November 2010 and harassing him. Thereafter he again says that on 07.03.2011 they came to his house, assaulted him, his father and other family members and left. No FIR has been lodged with regard to the incident even the details of the manner in which the criminal act was conducted is not indicated. All the petitioners who are the parents, brother-in-law and sister-in-law of the complainant have been implicated and no specific act is attributed to any of them for constituting offence under Section 323 or 380 IPC. Only vague and omnibus allegations are made and the fact that has come on record clearly shows that at the instance of the complainant's wife



proceedings have been initiated against him for offence under Section 498A IPC. The FIR is available on record. Criminal proceeding and the FIR is lodged much prior to the incident as narrated by the complainant.

Taking note of the all the factors, I am of the considered view that reading of the complaint or the statement of the complainant available on record does not disclose commission of offence. It is a case where from the record it is evident that he has filed the complaint only to put pressure on the petitioners because of the proceeding initiated against him earlier by his wife and, therefore, in the peculiar facts and circumstances of the case I am of the opinion that it is a fit case where inherent jurisdiction can be exercised to prevent misuse of the process of law and injustice to the senior citizens like the petitioners.

Accordingly, this application is allowed. Proceeding in Cr. Revision No. 373 of 2011 arising out of Complaint Case No. 255(C) of 2011 (Trial No. 2692 of 2011) pending in the court of 4th Additional District & Sessions Judge, Sasaram, Rohtas is quashed.

(Rajendra Menon, CJ)

mrl./-

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	06.07.2018
Transmission Date	06.07.2018

