

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.13437 of 2017

Arising Out of PS.Case No. -63 Year- 2014 Thana -MAGADH MEDICAL COLLEGE District-
GAYA

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1. Bijay Yadav S/o Kishori Yadav
2. Munni devi W/o Bijayyadav, Both R.O. Village Kathotia, P.S. Magadh Medica,
Dist.-Gaya

.... Petitioner/s

Versus

1. The State of Bihar
2. Munni Devi W/o Ajay Yadav R/o Village-Kathotia P.S. Magadhmedical, Dist.-
Gaya

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Amarendra Kumar Mishra, Adv.

For the Opposite Party/s : Mr. Md. Arif, A.P.P.

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CORAM: HONOURABLE MR. JUSTICE ARVIND SRIVASTAVA

CAV JUDGMENT

Date: 11-04-2018

Heard learned counsel for the parties.

This application under Section 482 of the Code of Criminal Procedure has been filed by the petitioner for quashing of order dated 14.12.2015 passed by the learned Additional Chief Judicial Magistrate, Gaya in connection with Magadh Medical Case No. 63 of 2014 whereby the learned court below took cognizance against the petitioners under Sections 34, 323 & 498A of the Indian Penal.

The brief facts, according to the F.I.R., is that informant was subjected to assault and torture by the petitioners and they have ousted her from her matrimonial home saying that they will not allow her to live in her matrimonial home. It is further alleged that



the petitioners used to threaten her and her family members also saying that if she will lodge a case, they will kill her and elope her dead body also. Hence, the informant being left with no option lodged the instant case.

Learned counsel for the petitioners has submitted that these petitioners happen to be brother-in-law and sister-in-law of the informant and have falsely been implicated in this case. In fact, prior to filing of the case, these petitioners along with other family members have been made accused in a case bearing Magadh Medical P.S. Case No. 107 of 2011, Annexure-3, in which the parties have compromised the case and thereafter again these petitioners have been made accused in this case with bald allegations. Moreover, the father of husband of the informant has also filed a case bearing Magadh Medical P.S. Case No. 67 of 2015 alleging therein that the informant and others have killed his son, who is husband of the informant. The series of cases itself show the conduct of the informant that she is in habit of filing forged and fabricated cases in order to harass the petitioners and to grab the property of the petitioners. Therefore, the prosecution of the petitioners appears to be a malicious prosecution in terms of judgment rendered by the Hon'ble Supreme Court in the case of *State of Haryana Vs. Bhajan Lal*, reported in *1992 Suppl. (1) SCC 335*. On the above ground, it is submitted that the cognizance order



dated 14.12.2015 passed by the learned Additional Chief Judicial Magistrate, Gaya is bad in law and is fit to be quashed.

It is pertinent to mention here that despite notice issued to the O.P. No.2 by this Court, she has chosen not to appear before this Court to contest the matter.

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 petitioners and agrees with the same. Therefore, further prosecution of the petitioners would amount to abuse of the process of the Court and the prosecution of the petitioners appears to be a malicious prosecution in view of the judgment rendered by the Hon'ble Supreme Court in the case of *State of Haryana Vs. Bhajan Lal*, reported in *1992 Suppl (1) SCC 335*. Relevant extract of paragraph 102 of the aforesaid judgment is quoted herein-below 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 order taking cognizance dated 14.12.2015 passed by the learned Additional Chief Judicial Magistrate, Gaya in connection with Magadh Medical Case No. 63 of 2014 whereby and whereunder cognizance has been taken against the petitioners for the offence under Sections 34, 323 & 498A of the Indian Penal Code, is not sustainable in the eye of law. It is, therefore, quashed.

This application is, accordingly, allowed.

(Arvind Srivastava, J)

Brajesh/-

AFR/NAFR	NAFR
CAV DATE	30.11.2017
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