

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.12935 of 2012

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1. SUDARSHAN YADAV S/O LATE SAHDEO YADAV R/O VILLAGE - INDAULI, P.S. JAMO BAZAR, DISTRICT - SIWAN, PERMANENTLY RESIDING AT 14SECTOR - C, GANDHI PALACE, INDAUR (M.P.)
 2. INDU DEVI W/O SUDARSHAN YADAV R/O VILLAGE - INDAULI, P.S. JAMO BAZAR, DISTRICT - SIWAN, PERMANENTLY RESIDING AT 14SECTOR - C, GANDHI PALACE, INDAUR (M.P.)
 3. SEEMA KUMARI @ SEEMA YADAV D/O SUDARSHAN YADAV R/O VILLAGE - INDAULI, P.S. JAMO BAZAR, DISTRICT - SIWAN, PERMANENTLY RESIDING AT 14SECTOR - C, GANDHI PALACE, INDAUR (M.P.)

... .. Petitioner/s

Versus

1. THE STATE OF BIHAR
2. MANJU DEVI W/O DINANATH YADAV, D/O SUDAMA RAY R/O VILLAGE - INDAULI, P.S. JAMO BAZAR, DISTRICT - SIWAN, AT PRESENT RESIDING AT VILLAGE - HARIHARPUR, P.S. JAMO BAZAR, DISTRICT – SIWAN

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Ranjeet Kumar
For the Opposite Party/s : Mr. Manoj Kumar-I(App)

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

Date : 11-04-2018

Heard learned counsels for the parties.

2. 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 15.07.2011, passed by the learned Sub-Divisional Judicial Magistrate, Siwan in connection with Complaint Case No. 299 of



2011, whereby and whereunder cognizance has been taken against the petitioners and others for the offence under section 498A of the Indian Penal Code.

3. The prosecution case, *in short*, is that after marriage of the complainant, the accused persons used to demand motorcycle and cash Rs. 50,000/-. The accused persons asked the complainant to request her father to fulfill the said demand, but her father was not able to fulfill the same. Thereafter, due to non-fulfillment of the aforesaid demand, the complainant was ousted from her matrimonial house after keeping her belongings.

4. Learned counsel appearing on behalf of the petitioners submits that no offence against the petitioners is disclosed and the present prosecution has been initiated with *mala fide* intention for the purposes of harassment. It is submitted that all the petitioners reside separately from the husband of the complainant and they have been implicated in this case merely because of they are relatives of the husband of the complainant. From the complaint petition, solemn affirmation and statement of witnesses, it appears that there is no specific allegation against these petitioners. Further submission is that the husband of the complainant filed Divorce



Case No. 72 of 2007 (Annexure-5) before the Family Court, Siwan for grant of Decree of divorce. Therefore, learned counsel prays for quashing the order taking cognizance.

5. Considering the materials available on record and the facts of the case, this Court finds substance in the submissions advanced on behalf of the petitioners and agrees with the same. The present case has been filed against these petitioners, who are relatives of the husband of the complainant, after filing of Divorce Case by the husband of the complainant, 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 channelized and inflexible guidelines or rigid formula and to give an exhaustive list of myriad kinds of cases wherein such power should be exercise:

(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.”

6. In view of the discussions made above, the order taking cognizance dated 15.07.2011, passed by the learned Sub-Divisional Judicial Magistrate, Siwan in connection with



Complaint Case No. 299 of 2011, is not sustainable in the eye of law. Therefore, it is, hereby, quashed.

7. Accordingly, the application stands allowed.

(Arvind Srivastava, J)

Shailendra/-

AFR/NAFR	NAFR
CAV DATE	30.11.2017
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