

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.33640 of 2015

Arising Out of PS. Case No.-50 Year-2014 Thana- KHAGARIA COMPALINT CASE
District- Khagaria

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1. Dipak Malakar, S/o Wakil Malakar
 2. Wakil Malakar, S/o Late Anandi Malakar
 3. Chandrakala Devi, W/o Wakil Malakar
 4. Reena Devi, D/o Wakil Malakar
 5. Pankaj Malakar @ Pankaj Kumar, S/o Wakil Malakar
- All resident of Village- Durgapur, P.S.- Muffasil, District-
Khagaria

... .. Petitioner/s

Versus

1. The State of Bihar.
2. Soni Devi, W/o Deepak Malakar, D/o Bhagwat Malakar, At present residing
at Gogri, P.O- Gogri, District- Khagaria

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr. Ranjeet Kumar Singh, Advocate
For the Opposite Party No.1	:	Mr. B.N.Panday (APP)
For the Opposite Party No.2	:	Mr. Mrityunjay Kumar, Advocate
		Mr. Umesh Prasad, Advocate

CORAM: HONOURABLE THE CHIEF JUSTICE

ORAL JUDGMENT

Date : 25-04-2018

Seeking quashing of Complaint Case 50C/2014 pending
in the Court of Sub-Divisional Judicial Magistrate, Khagaria and
an order dated 30th of April, 2015 taking cognizance for an offence
under Section 498A of the Indian Penal Code, this application has
been filed by the petitioners.

Petitioner No.1 Dipak Malakar is the husband of
opposite party no.2-the complainant Soni Devi. Petitioner No.2 is



the father of petitioner no.1, petitioner no.3 is the mother of petitioner no.1 and petitioner nos. 4, and 5 are the brother in law and sister in law of the complainant.

It is the case of the complainant that she was married to petitioner no.1 Dipak Malakar on 20th June, 2007 according to Hindu Rites and religious customs. On the eve of marriage, gifts to the tune of Rs.60,000/- and a cash of Rs.31,000/- was paid, but after coming and staying in the matrimonial house, a child was born to her and thereafter the family members started harassing her and demanding Rs.50,000/-. She communicated the same to her parents and when the same was not paid, harassment is maintained upon her. Accordingly, based on the aforesaid, the complaint has been filed.

It is the case of the petitioners that allegations of harassment are incorrect. Petitioner no.1, after the complainant left the house, had filed an application for restitution of conjugal rights and in retaliation thereof, it is stated that this application has been filed complaining commission of an offence under Section 498A of the Indian Penal Code. By referring to the complaint and the statement of the complainant on affidavit and the statements of three witnesses examined and the proceedings held before the Court below, it is stated that omnibus and general allegations are



made with regard to demand of dowry and harassment and based on the same against all the petitioners, the allegations are not proved.

Learned counsel for the opposite parties refuted the aforesaid and argued that once the complainant has made specific averment with regard to harassment, at this stage in a proceeding under Section 482 of the Code of Criminal Procedure, the Court should not interfere.

The principles of interfering into such matters has been laid down by the Hon'ble Supreme Court to the following cases viz:- **Gian Singh Versus State of Punjab and another, (2012) 10 SCC 303; Taramani Parakh Versus State of Madhya Pradesh and others, (2015) 11 SCC 260; Kans Raj Versus State of Punjab and others; (2000) 5 SCC 207; and Amit Kapoor Versus Ramesh Chander and another, (2012) 9 SCC 460**, and it is seen that in the case of **Taramani Parakh** (supra) after referring to the principles governing quashing of the complaint in a proceeding under Section 482 of the Code of Criminal Procedure in paras 10 and 11, the following principles have been crystallized:-

10. The law relating to quashing is well settled. If the allegations are absurd or do not make out any case or if it can be held that there is abuse



of process of law, the proceedings can be quashed but if there is a triable case the Court does not go into reliability or otherwise of the version or the counter version. In matrimonial cases, the Courts have to be cautious when omnibus allegations are made particularly against relatives who are not generally concerned with the affairs of the couple. We may refer to the decisions of this Court dealing with the issue.

11. Referring to earlier decisions, in *Amit Kapoor V. Ramesh Chander*, (2012) 9 SCC 460, it was observed:

"27.1. Though there are no limits of the powers of the Court under Section 482 of the Code but the more the power, the more due care and caution is to be exercised in invoking these powers. The power of quashing criminal proceedings, particularly, the charge framed in terms of Section 228 of the Code should be exercised very sparingly and with circumspection and that too in the rarest of rare cases.

27.2. The Court should apply the test as to whether the uncontroverted allegations as made from the record of the case and the documents submitted therewith prima facie establish the offence or not. If the allegations are so patently absurd and inherently improbable that no prudent person can ever reach such a conclusion and where the basic ingredients of a criminal offence are not satisfied then the Court may interfere.

27.3. The High Court should not unduly interfere. No meticulous examination of the evidence is needed for considering whether the case would end in conviction or not at the stage of framing of charge or quashing of charge.



27.4. Where the exercise of such power is absolutely essential to prevent patent miscarriage of justice and for correcting some grave error that might be committed by the subordinate courts even in such cases, the High Court should be loath to interfere, at the threshold, to throttle the prosecution in exercise of its inherent powers.

27.5. Where there is an express legal bar enacted in any of the provisions of the Code or any specific law in force to the very initiation or institution and continuance of such criminal proceedings, such a bar is intended to provide specific protection to an accused.

27.6. The Court has a duty to balance the freedom of a person and the right of the complainant or prosecution to investigate and prosecute the offender.

27.7. The process of the court cannot be permitted to be used for an oblique or ultimate/ulterior purpose.

27.8. Where the allegations made and as they appeared from the record and documents annexed therewith to predominantly give rise and constitute a "civil wrong" with no "element of criminality" and does not satisfy the basic ingredients of a criminal offence, the court may be justified in quashing the charge. Even in such cases, the court would not embark upon the critical analysis of the evidence.

27.9. Another very significant caution that the courts have to observe is that it cannot examine the facts, evidence and materials on record to determine whether there is sufficient material on the basis of which the case would end in a conviction; the court is concerned primarily with the allegations taken as a whole whether they will constitute an offence and, if so, is it an abuse of the process of court leading to injustice.



27.10. It is neither necessary nor is the court called upon to hold a full- fledged enquiry or to appreciate evidence collected by the investigating agencies to find out whether it is a case of acquittal or conviction.

27.11. Where allegations give rise to a civil claim and also amount to an offence, merely because a civil claim is maintainable, does not mean that a criminal complaint cannot be maintained.

27.12. In exercise of its jurisdiction under Section 228 and/or under Section 482, the Court cannot take into consideration external materials given by an accused for reaching the conclusion that no offence was disclosed or that there was possibility of his acquittal. The Court has to consider the record and documents annexed therewith by the prosecution.

27.13. Quashing of a charge is an exception to the rule of continuous prosecution. Where the offence is even broadly satisfied, the Court should be more inclined to permit continuation of prosecution rather than its quashing at that initial stage. The Court is not expected to marshal the records with a view to decide admissibility and reliability of the documents or records but is an opinion formed *prima facie*.

27.14. Where the charge-sheet, report under Section 173(2) of the Code, suffers from fundamental legal defects, the Court may be well within its jurisdiction to frame a charge.

27.15. Coupled with any or all of the above, where the Court finds that it would amount to abuse of process of the Code or that the interest of justice favours, otherwise it may quash the charge. The power is to be exercised *ex debito justitiae* i.e. to do real and substantial justice for administration of which alone, the courts exist.

(Ref. State of W.B. v. Swapan Kumar Guha [(1982) 1 SCC 561 : 1982 SCC (Cri) 283];



Madhavrao Jiware v. Sambhajirao Chandojirao Angre [(1988) 1 SCC 692 : 1988 SCC (Cri) 234]; Janata Dal v. H.S. Chowdhary [(1992) 4 SCC 305 : 1993 SCC (Cri) 36]; Rupn Deol Bajaj v. Kanwar Pal Singh Gill [(1995) 6 SCC 194 : 1995 SCC (Cri) 1059]; G. Sagar Suri v. State of U.P. [(2000) 2 SCC 636 : 2000 SCC (Cri) 513]; Ajay Mitra v. State of M.P. [(2003) 3 SCC 11 : 2003 SCC (Cri) 703]; Pepsi Foods Ltd. v. Special Judicial Magistrate [(1998) 5 SCC 749 : 1998 SCC (Cri) 1400]; State of U.P. v. O.P. Sharma [(1996) 7 SCC 705 : 1996 SCC (Cri) 497]; Ganesh Narayan Hegde v. S. Bangarappa [(1995) 4 SCC 41 : 1995 SCC (Cri) 634]; Zandu Pharmaceutical Works Ltd. v. Mohd. Sharaful Haque [(2005) 1 SCC 122 : 2005 SCC (Cri) 283]; Medchl Chemicals & Pharma (P) Ltd. v. Biological E. Ltd. [(2000) 3 SCC 269 : 2000 SCC (Cri) 615]; Shaksan Belthissor v. State of Kerala [(2009) 14 SCC 466 : (2010) 1 SCC (Cri) 1412]; V.V.S. Rama Sharma v. State of U.P. [(2009) 7 SCC 234 : (2009) 3 SCC (Cri) 356]; Chunduru Siva Ram Krishna v. Peddi Ravindra Babu [(2009) 11 SCC 203 : (2009) 3 SCC (Cri) 1297]; Sheonandan Paswan v. State of Bihar [(1987) 1 SCC 288 : 1987 SCC (Cri) 82]; State of Bihar v. P.P. Sharma [1992 Supp (1) SCC 222 : 1992 SCC (Cri) 192]; Lalmuni Devi v. State of Bihar [(2001) 2 SCC 17 : 2001 SCC (Cri) 275]; M. Krishnan v. Vijay Singh [(2001) 8 SCC 645 : 2002 SCC (Cri) 19]; Savita v. State of Rajasthan [(2005) 12 SCC 338 : (2006) 1 SCC (Cri) 571] and S.M. Datta v. State of Gujarat [(2001) 7 SCC 659 : 2001 SCC (Cri) 1361 : 2001 SCC (L&S) 1201]).

27.16. These are the principles which individually and preferably cumulatively (one or more) be taken into consideration as precepts to exercise of extraordinary and wide plenitude and jurisdiction under Section 482 of the Code by the High Court. Where the factual foundation for an offence has been laid down, the courts should be reluctant and should not hasten to quash the



proceedings even on the premise that one or two ingredients have not been stated or do not appear to be satisfied if there is substantial compliance with the requirements of the offence."

If we analyze the case in hand in the backdrop of the aforesaid principles, it is seen that except for making general allegation that her husband was taking dowry and harassing her, no specific allegation with regard to nature of harassment, the particulars when and how the harassment was made, are indicated against any of the petitioners. At best, specific allegation is made against petitioner no.1 Dipak Malakar. As far as other petitioners are concerned, general omnibus allegations are made against all the family members.

Keeping in view the nature of complaint made and the law laid down, as indicated in the cases referred to hereinabove, I am of the considered view that except for petitioner no.1 Dipak Malakar, the husband, no specific allegations are made out on a bare reading of the complaint against petitioner nos.2 to 5 and, therefore with regard to these petitioners, the petition has to be allowed and is, accordingly, allowed.

Accordingly, the order so far it pertains to taking cognizance and registering the complaint against petitioner nos.2 to 5 are concerned, the same is quashed. Petitioner No.1 Dipak



Malakar should face the trial and raise all objections, as are permissible in law before the court below.

With the aforesaid, the application is allowed and disposed of.

(Rajendra Menon, CJ)

Sunil/-

AFR/NAFR	NAFR
CAV DATE	NA
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