

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.722 of 2019

Arising Out of PS. Case No.-9 Year-2018 Thana- WARISNAGAR District- Samastipur

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1. Chandra Mohan Singh son of Late Ram Kripal Singh, Resident of Village-Shiropatti (Sharopati), P.S.- Singheshwar, District- Madhepura
 2. Sushila Singh wife of Chandra Mohan Singh, Both resident of Village-Shiropatti (Sharopati), P.S.- Singheshwar, District- Madhepura

... .. Petitioner/s

Versus

1. The State of Bihar
2. Pallavi Singh daughter of Ghanshyam Prasad Singh, Resident of Village-Sari Ward no. 7, P.S.- Warishnagar (Mathurapur O.P.), District - Samastipur

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr.Shailendra Kumar Singh
For the Opposite Party/s : Mr. Sanjay Kumar Tiwary

CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH
ORAL JUDGMENT

Date : 16-12-2019

The present petition has been filed for quashing the order taking cognizance dated 03.12.2018/ 19.06.2018 passed by the learned C.J.M., Samastipur in connection with Warishnagar P.S. Case No. 09 of 2018, G.R. No. 124 of 2018, whereby and where-under the learned C.J.M., Samastipur has taken cognizance against the petitioners under Section 498(A) of the Indian Penal Code and Section 3 and 4 of the Dowry Prohibition Act.

2. The brief facts of the case, according to the written report of the Opposite Party no.2 dated 24.01.2018, submitted before the Officer-in-charge, Mathurapur O.P., is that her marriage was solemnized with one Shankar Suman in



accordance with the Hindu rites and customs on 18.04.2012, whereafter she had gone to her in-laws' place and stayed there for about two years peacefully. It has been further alleged that subsequently, her mother-in-law and father-in-law, who are the petitioners herein, had told her to bring a sum of Rs.10 lacs from her parents, however, the Opposite Party No.2 is stated to have shown her helplessness, whereupon it is alleged that her husband and in-laws started harassing and torturing her, leading to filing of a case bearing Singheshwar P.S. Case No. 196 of 2016 dated 21.09.2016 under Sections 341, 323, 504, 506, 34, 498A of the Indian Penal Code as well as Section 3/4 of the Dowry Prohibition Act and the husband as also the father-in-law of the Opposite Party No.2 were sent to jail after being arrested. Thereafter, on account of intervention of the family members and others, the in-laws of the informant had tried to settle the matter and assured her that they would not harass her any further. Thereafter, the husband and father-in-law of the informant were released on bail. After lapse of some time, it is allegation by the opposite party No.2 that her husband and in-laws again started torturing her and on 9.5.2017, it is alleged that the husband of the petitioner at about 4:00 P.M. in the evening had taken the informant to Saharsa Railway station,



however, she managed to escape and went to her father's home. On the basis of the said written complaint of the Opposite Party No.2, as aforesaid, Warishnagar P.S. Case No. 9 of 2018 was registered under Sections 406, 420, 498A and 504/34 of the Indian Penal Code as also under Sections 3/4 of the Dowry Prohibition Act, whereafter upon investigation, the police had filed a charge sheet against the accused persons and the learned court below, by the impugned order dated 19.06.2018/ 03.12.,2018, has taken cognizance for the offence under Sections 498(A)/34 of the Indian Penal Code and sections 3/4 of the Dowry Prohibition Act.

3. The learned counsel for the petitioner has submitted that earlier also the Opposite Party No.2 had filed a case bearing Shingheshwar P.S. Case No. 196 of 2016 on same and similar allegations under Sections 341, 323, 504, 506, 34, 498A of the Indian Penal Code as well as Section 3/4 of the Dowry Prohibition Act, however, the accused persons of the said case i.e. the husband of the Opposite Party No.2 as also her father-in-law were acquitted by the learned court of Sub-Divisional Judicial Magistrate, Madhedpura by a judgment dated 16.06.2017 passed in Trial No. 61 of 2017. It is thus submitted that only after acquittal of the husband and father-in-law of the



Opposite Party No.2, in the earlier round of prosecution by the Opposite Party No.2, once again same type of case has been preferred by the Opposite Party No.2 on similar allegations, hence it is apparent that the same is manifestly attended with mala fide and the prosecution has been launched with an ulterior motive. In this connection, the learned counsel for the petitioner has relied upon a judgment reported in 1992 Supp. (1) SCC 335 **State of Haryana & Ors. Vs. Bhajan Lal & Ors.**, paragraph no.102 whereof is reproduced herein below:-

“102. 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.

Xx	xx	xx
xx	xx	xx

(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.”

4. It is thus submitted by the learned counsel for the petitioners that the present prosecution at the behest of the Opposite Party No.2 is liable to be set aside, in view of the aforesaid judgment rendered by the Hon’ble Supreme Court in the case of **Bhajan Lal** (supra), being manifestly attended with mala fide and having been instituted maliciously with an ulterior motive for wreaking vengeance.

5. The learned counsel for the petitioners has further submitted that as far as the petitioners are concerned, they, being the mother-in-law and father-in-law of the opposite party no.2, have got no complicity in the matter inasmuch as a bare perusal of the FIR in question would show that on 9.5.2017 at about 4:00 P.M. in the evening, it was husband of the Opposite Party No.2, who had caught her and dragged her as also taken her to Saharsa Railway station forcibly, from where the Opposite Party No.2 had managed to escape and gone to her parental house, hence, allegation whatsoever, has been levelled against the husband and not against the father-in-law and mother-in-law, who are petitioners before this Court.

6. In this connection, the learned counsel for the



petitioners has further referred to a judgment rendered by the Hon'ble Apex Court in the case of **Preeti Gupta & Anr. vs. State of Jharkhand & Anr.**, reported in 2010(7) SCC 667, paragraph nos. 21, 23, 24, 25, 26, 29, 32, 34, 35 and 39 are reproduced herein below:-

“21. This Court in *State of Karnataka v. L. Muniswamy* observed that the wholesome power under Section 482 CrPC entitles the High Court to quash a proceeding when it comes to the conclusion that allowing the proceeding to continue would be an abuse of process of court or that the ends of justice require that the proceeding ought to be quashed. The High Courts have been invested with inherent powers, both in civil and criminal matters, to achieve a salutary public purpose. A court proceeding ought not to be permitted to degenerate into a weapon of harassment or persecution. In this case, the Court observed that ends of justice are higher than the ends of mere law though justice must be administered according to laws made by the legislature. This case has been followed in a large number of subsequent cases of this Court and other courts.

23. This Court in *Madhavrao Jiwajirao Scindia v. Sambhajirao Chandrojirao Angre*⁶ observed in SCC para 7 as under: (SCC p. 695)

“7. The legal position is well settled that when a prosecution at the initial stage is asked to be quashed, the test to be applied by the court is as to whether the uncontroverted allegations as made prima facie establish the offence. It is also for the court to take into consideration any special features which appear in a particular case to consider whether it is expedient and in the interest of justice to permit a prosecution to continue. This is so on the basis that the court cannot be utilised for any oblique purpose and



where in the opinion of the court chances of an ultimate conviction are bleak and, therefore, no useful purpose is likely to be served by allowing a criminal prosecution to continue, the court may while taking into consideration the special facts of a case also quash the proceeding even though it may be at a preliminary stage.”

24. In *State of Haryana v. Bhajan Lal*⁷ this Court in the backdrop of interpretation of various relevant provisions of the Code of Criminal Procedure (for short “CrPC”) 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 of the Constitution of India or the inherent powers under Section 482 CrPC gave the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of process of court or otherwise to secure the ends of justice. Thus, this Court made it clear that 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 to myriad kinds of cases wherein such power should be exercised: (SCC pp. 378-79, para 102)

“(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made



in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the Act concerned (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the Act concerned, providing efficacious redress for the grievance of the aggrieved party.

(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.”

25. In *G. Sagar Suri v. State of U.P.*⁸ this Court observed that it is the duty and obligation of the criminal court to exercise a great deal of caution in issuing the process particularly when matters are essentially of civil nature.

26. This Court in *Zandu Pharmaceutical Works Ltd. v. Mohd. Sharaful Haque*⁹ observed thus: (SCC p. 128, para 8)

“8. ... It would be an abuse of process of court to allow any action which would result in injustice and prevent promotion of justice. In exercise of the powers, court would be justified to quash any proceeding if it finds that



initiation/continuance of it amounts to abuse of the process of court or quashing of these proceedings would otherwise serve the ends of justice. When no offence is disclosed by the complaint, the court may examine the question of fact. When a complaint is sought to be quashed, it is permissible to look into the materials to assess what the complainant has alleged and whether any offence is made out even if the allegations are accepted in toto.”

29. Admittedly, Appellant 1 is a permanent resident of Navasari, Surat, Gujarat and has been living with her husband for more than seven years. Similarly, Appellant 2 is a permanent resident of Goregaon, Maharashtra. They have never visited the place where the alleged incident had taken place. They had never lived with Respondent 2 and her husband. Their implication in the complaint is meant to harass and humiliate the husband's relatives. This seems to be the only basis to file this complaint against the appellants. Permitting the complainant to pursue this complaint would be an abuse of the process of law.

32. It is a matter of common experience that most of these complaints under Section 498-A IPC are filed in the heat of the moment over trivial issues without proper deliberations. We come across a large number of such complaints which are not even bona fide and are filed with oblique motive. At the same time, rapid increase in the number of genuine cases of dowry harassment is also a matter of serious concern.

34. Unfortunately, at the time of filing of the complaint the implications and consequences are not properly visualised by the complainant that such complaint can lead to insurmountable harassment, agony and pain to the complainant, accused and his close relations.

35. The ultimate object of justice is to find out the truth and punish the guilty and protect the innocent. To find out the truth is a Herculean



task in majority of these complaints. The tendency of implicating the husband and all his immediate relations is also not uncommon. At times, even after the conclusion of the criminal trial, it is difficult to ascertain the real truth. The courts have to be extremely careful and cautious in dealing with these complaints and must take pragmatic realities into consideration while dealing with matrimonial cases. The allegations of harassment of husband's close relations who had been living in different cities and never visited or rarely visited the place where the complainant resided would have an entirely different complexion. The allegations of the complainant are required to be scrutinised with great care and circumspection. 39. When the facts and circumstances of the case are considered in the background of legal principles set out in the preceding paragraphs, then it would be unfair to compel the appellants to undergo the rigmarole of a criminal trial. In the interest of justice, we deem it appropriate to quash the complaint against the appellants. As a result, the impugned judgment of the High Court is set aside. Consequently, this appeal is allowed.”

7. Per contra, the learned counsel for the Opposite Party No.2 has vehemently opposed the prayer of the petitioners for quashing the order taking cognizance dated 19.06.2018/ 03.12.2018 and has submitted that the in-laws of the Opposite Party No.2 i.e. the petitioners herein have harassed the Opposite Party no.2 on account of non-fulfillment of demand for dowry and even the police, upon investigation, has *prima facie* found the case to be true as against the petitioners herein and the husband of the opposite Party No.2,



hence the present petition deserves to be dismissed, being without any merit.

8. I have heard the learned counsel for the petitioners as also the learned counsel appearing for the Opposite Party No.2 and I find that the impugned orders dated 19.06.2018/ 03.12.2018 have been passed mechanically without any application of mind by the learned C.J.M., Samastipur in connection with Warishnagar P.S. Case No. 9 of 2018 as also without considering the prevalent law on the subject matter. It is further apparent from the records of the case that the main allegation is against the husband and not against the mother-in-law and father-in-law of the Opposite Party No.2, who are petitioners in the present case, as detailed in the preceding paragraphs, and there is no specific allegation of assault, abuse or demand for dowry qua the petitioners herein nor it has been explained as to why, where and when the petitioners had tortured the informant/ opposite party no.2 or demanded dowry from her and on the contrary I find that only general and omnibus allegations have been levelled against the petitioners by the opposite Party No.2 and that too with oblique motives and with a view to increase her bargaining power.



9. Considering the facts and circumstances of the case as also the law laid down by the Hon'ble Apex Court in the case of Bhajan Lal (supra) and Preeti Gupta (supra), this Court finds that it would be unfair to compel the petitioners to undergo the rigor of criminal trial and even otherwise I find that the order dated 19.06.2018/ 03.12.2018 qua the petitioners herein, by which the cognizance has been taken by the learned court below, is perverse and has been passed in a mechanical manner, without any application of mind, hence it is liable to be quashed. In any view of the matter, a bare perusal of the FIR would show that the allegations levelled against the petitioners, do not prima facie constitute any offence and do not make out a case as against the petitioners herein.

10. For the reasons mentioned herein above, the present petition is allowed and the order dated 19.06.2018/ 03.12.2018 passed by the learned C.J.M., Samastipur in connection with Warishnagar P.S. Case No. 9 of 2018, as regards the petitioners herein, is quashed.

Tiwary/-

AFR/NAFR	AFR
CAV DATE	N/A
Uploading Date	07.02.2020
Transmission Date	

(Mohit Kumar Shah, J)

