

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.23673 of 2017**

Arising Out of PS. Case No.-12 Year-2017 Thana- MUFFASIL District- West Champaran

1. Madhu Kumari @ Madhu Devi Daughter of Srinivas Prasad.
2. Puja Kumari @ Puja Devi, Daughter of Srinivas Prasad.
Both Resident of Village- Nawarangia Patarakha, P.S. Manuapul, District-
West Champaran.

... .. Petitioner/s

Versus

1. The State Of Bihar
2. Geeti Gunjika, Daughter of Arvind Kumar Singh and Wife of Prabhash
Kumar, Resident of Village- Amawa Majhar, P.S. Bettiah Mufassil, District-
West Champaran.

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr.Sanjeev Kumar Shrivastava Mr. Ravish Mishra
For the Informant	:	Mr. Sachida Nand Rai

**CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH
CAV JUDGMENT**

Date : 09-12-2019

The present petition has been filed for quashing the order dated 19.4.2017 passed by the learned ACJM, 1st Bettiah, West Champaran in Bettiah (M) Manuapul P.S.Case No. 12 of 2017 whereby and whereunder cognizance has been taken against the petitioners herein under Sections 307, 313, 498(A), 341, 342, 504/34 of the Indian Penal Code and Section 3 /4 of the Dowry Prohibition Act.

2. The brief facts of the case are that the opposite party no. 2 had filed a written complaint before the Officer-in-Charge, Bettiah (Muffasil), West Champaran, dated 17.1.2017, inter alia,



stating therein that her marriage was solemnized with one Prabhash Kumar on 25.4.2012 in accordance with Hindu Rites and Customs and huge amount of cash, gifts etc. were given to the father-in-law and mother-in-law of the informant and thereafter, she had gone on the second day after marriage to her in-laws' place and had taken jewellery, clothes, LED, washing machine, freeze etc. along with her and had started living with the accused persons including the petitioners herein. It is further alleged that since the opposite party no. 2 had completed the fashion designing course, the accused persons started pressurizing her to go to Delhi for engaging herself in a job and when she became ready to go to Delhi, the accused persons demanded a sum of Rs. 1,00,000/- for the purposes of purchasing a flat at Delhi. Nonetheless, it is alleged that the opposite party no. 2 along with her husband had gone to Delhi and had taken a flat on rent where they took up a job. Subsequently, the accused persons had come to Delhi and started demanding a sum of Rs. 1,00,000/- by way of dowry, however, on account of non-fulfillment of the said demand, the accused persons used to beat the opposite party no. 2 and had tried to kill her and subsequently, had also given her some medicines, which had led to abortion. It is further alleged that



the husband of the opposite party no. 2 had then developed physical relationship with a lady in Delhi and did not use to come to their residence for 2-3 days at a stretch. Thereafter, it transpired that the husband of the opposite party no. 2 had filed a divorce case, whereupon the opposite party no. 2 had gone to her in-laws' place and the accused persons told her that till she gives money, no settlement can take place. Lastly, it is alleged that on 15.1.2017, at about 9.30 pm. in the night, when she was sleeping, the accused persons tried to kill her by pressing her mouth with pillow, however, she managed to escape and had then called her father, who took her to his house.

3. It appears that the police had investigated the case at length and had thereafter filed a final form dated 24.3.2017 wherein the case was found to be untrue on account of lack of evidence. Thereafter, the opposite party no. 2 had filed a protest petition whereupon the learned court of ACJM, 1st, Bettiah, West Champaran by the impugned order dated 19.4.2017, while differing from the final form submitted by the police, had taken cognizance of the offences alleged, as against the accused persons including the petitioners herein under Sections 307, 313, 498(A), 341, 342, 504/34 of the Indian Penal Code and Sections 3 /4 of the Dowry Prohibition Act.



4. The learned counsel for the petitioners has submitted that first of all, the police, upon a thorough investigation, had found the entire allegations levelled by the informant to be untrue on account of lack of evidence and secondly, as far as the petitioners are concerned, they are married sister-in-laws of the opposite party no. 2 and do not have any role to play in the alleged occurrence. It is submitted that as far as the petitioner no. 1 is concerned, her marriage was solemnized in the year 2006 and as far as the petitioner no. 2 is concerned, she is also married and living in the State of Jharkhand since a very long time, hence, there is no question of the said two petitioners having any complicity in the matter. It is further submitted that the opposite party no. 2 was living with her husband at Delhi and if at all, any complicity is existing in the matter it is that of the husband of the opposite party 2 and not the petitioners herein. It is further submitted by the learned counsel for the petitioners that the learned court below has taken cognizance against the accused persons in a mechanical manner, hence, the same is required to be set aside.

5. I have heard the learned counsel for the parties and perused the materials on record.

6. At this juncture, it would be relevant to refer to a



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

21. This Court in State of Karnataka v. L. Muniswamy⁴ 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 Jiwarekar v. Sambhajirao Chandojirao Angre⁶ 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 ⁶⁷⁴to 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 Lal⁷ 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.

 ⁶⁷⁵ (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  676 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. This Court finds that the impugned order dated 19.4.2017, passed by the learned court below whereby and whereunder cognizance has been taken under Section 307, 313, 498(A), 341, 342, 504/34 of the Indian Penal Code and Sections 3/ 4 of the Dowry Prohibition Act, has been passed mechanically without any application of mind, as also without considering the prevalent law on the subject-matter apart from it not having considered the nature of allegations levelled against the individual accused persons including the petitioners herein. It is further apparent from the records of the case that the petitioners herein are the sister-in-laws of the opposite party no. 2 (informant), living at a separate and at a different place, having nothing to do with the affairs of the opposite party no. 2 / her husband, which is apparent from the facts of the case and moreover, no specific allegation of any assault, abuse or demand of dowry has been made qua the petitioners herein nor it has



been explained as to how, where and when the petitioners had tortured the opposite party no. 2 or demanded dowry from her and on the contrary, I find that only a general and omnibus allegation has been levelled against the petitioners by the opposite party no. 2, only with oblique motives and probably with a view to increase the bargaining power.

8. Considering the facts and circumstances of the case, as also the law laid down by the Hon'ble Apex Court in the Case of *Preeti Gupta* (supra), this Court finds that it would be unfair to compel the petitioners herein to undergo the rigours of a criminal trial and even otherwise, I find that the order dated 19.4.2017 by which cognizance has been taken by the learned court below as far as the petitioners are concerned, is perverse and passed in a mechanical manner without any application of mind, hence, is required to be quashed. In any view of the matter, a bare perusal of the complaint of the opposite party no. 2, filed before the Officer-in-Charge / protest petition would show that the allegations levelled therein do not prima facie constitute any offence in order to make out a case as against the petitioners.

9. For the reasons mentioned hereinabove, the present petition is allowed and the order dated 19.4.2017 passed by the learned ACJM, 1st Bettiah, West Champaran in connection with



Bettiah (M) Manuapul P.S. Case No. 12 of 2017, as regards the
petitioners herein, is quashed.

10. The petition stands allowed.

(Mohit Kumar Shah, J)

ajay gupta/-

AFR/NAFR	AFR
CAV DATE	NA
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