

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.47976 of 2014

Arising Out of Case No.-4167 Year-2012 Thana- COMPLAINT CASE District- Araria

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1. Babli Jha, Wife of Jeevan Kumar Jha, D/o Krishna Nand Jha
 2. Krishna Nand Jha, Son of Late Sahdeo Jha
 3. Rajesh Kumar Jha,
 4. Prasun Kumar Jha Both son of Krishna Nand Jha,
All R/o- Village- Bhramarpur, P.S.- Bihpur, District- Bhagalpur, Pin- 853201
... .. Petitioner/s
- Versus

1. The State of Bihar.
 2. Jeevan Kumar Jha, Son of Late Tirthanand Jha, R/o Village + P.O.- Jainagar,
P.S.- Bhargama, District- Araria, present Address- Sergeant J.K. Jha + Radio
Tech, Air Force Station, Halwara P.S.- Sudhar, District- Luhiyana Punjab Pin
141106
... .. Opposite Party/s
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Appearance :

For the Petitioner/s	:	Mr. Gopal Govind Mishra with Mr. Ashutosh Kumar, Advocates
For the State	:	Mr. Parmanand Kumar, APP
For the O.P. No. 2	:	Mr. Subodh Kumar Jha with Mr. Bal Krishna Mishra, Advocates

CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH
ORAL JUDGMENT

Date : 26-02-2019

Heard learned counsel for the petitioners; learned A.P.P.
for the State and learned counsel for the opposite party no. 2.

2. The petitioners have moved the Court under Section
482 of the Code of Criminal Procedure (hereinafter referred to as
the ‘Code’) 1973 for the following relief:

*“That is an application for quashing the order dated
04.03.2014 passed by Sri S. K. Sanjay Judicial
Magistrate 1st Class Arariya in complaint case no.
4167 of 2012 by which cognizance has been taken*



under sections 193 and 500 of the Indian penal Code against the petitioners and issued summons to them.”

3. The opposite party no. 2, who is the husband of the petitioner no. 1, has filed the complaint case based on the finding recorded by the Court of Judicial Magistrate, 1st Class, Araria in judgment dated 27.03.2010 in Bhargama P. S. Case No. 81 of 2000 (G.R. No. 1429 of 2000/ Tr. No. 1808 of 2009) in a case filed by the petitioner no. 1 against the opposite party no. 2 and his five others relatives. In the same, the allegations of torture, abuse and demand of dowry were levelled and after a full-fledged trial, the opposite party no. 2 and his family members were acquitted. In the judgment of acquittal dated 27.03.2010, the Court had made certain observations that the allegation of demand of dowry was not true. This prompted the opposite party no. 2 to file the present complaint in which cognizance has been taken.

4. Learned counsel for the petitioners submitted that cognizance under Section 193 of the Indian Penal Code is impermissible as the procedure required to be followed under Sections 195 and 340 of the Code have not been followed. It was submitted that if the allegation under Section 193 of the Indian Penal Code relates to or arises out of any judicial proceeding, it is the Court concerned which has to make the complaint and then



also the procedure of an enquiry as laid down in Section 340 of the Code has to be followed before cognizance can be taken. It was submitted that in the present case, no such procedure having been adopted, the order taking cognizance under Section 193 of the Indian Penal Code is unsustainable. With regard to Section 500 of the Indian Penal Code, it was submitted that the opposite party no. 2 cannot, after 17 years of marriage, wake up and make an allegation with regard to his reputation being harmed and that too, based on the judgment of acquittal. Learned counsel submitted that the present case itself is frivolous and abuse of the process of the Court.

5. Learned A.P.P. submitted that though the trial court has not found the evidence of the prosecution reliable but without referring to the actual evidence, recording of such finding cannot be verified. It was submitted that the evidence being held to be false required to be dealt with by the Court in detail, which has not been done.

6. Learned counsel for the opposite party no. 2, who has filed counter affidavit, submitted that the petitioners have harassed him and his family right from the day of marriage and by filing criminal case in which his father also had to go to jail and he had problems in his job in the Indian Air Force. It was submitted that



opposite party no. 2 comes from a poor family and, thus, could not satisfy the needs of petitioner no. 1. Learned counsel, on the point of cognizance under Section 193 of the Indian Penal Code, was not able to defend the same. However, with regard to cognizance under Section 500 of the Indian Penal Code, it was submitted that the conduct of the petitioners has made them liable for such prosecution as they had levelled false charges against the opposite party no. 2 and his family members which has led to his reputation being damaged within his organization and colleagues. At this juncture, on a query of the Court as to how, based on the judgment of acquittal, such step can be taken by him of filing a complaint, as has been done, especially in view of the trial Court not recording the entire prosecution evidence and only quoting selectively from the depositions could have arrived at a positive finding of the demand of dowry be false rather than giving benefit of doubt to the accused, learned counsel did not have any material to satisfy the Court or show that the recording by the trial Court is correct and justified, being based on materials/evidence before it.

7. Having considered the facts and circumstances of the case and submissions of learned counsel for the parties, the Court finds that a case for interference has been made out.



8. Coming to the merits of the matter, as the position in law is clear, cognizance could not have been taken under Section 193 of the Indian Penal Code in view of provisions of Section 195 read with Section 340 of the Code. Thus, such order taking cognizance is unsustainable. Further, with regard to the issue of defamation, there could not have been a definite finding with regard to the allegation of dowry being false for the reason that the Court has not dealt with the entire evidence of the prosecution. As has been rightly submitted by the learned A.P.P., selectively portions have been quoted and relied upon. Thus, in the opinion of this Court, the trial Court had to deal with the entire evidence and at least had to take note of the same before coming to such categorical finding. However, even the benefit of doubt, which is required to be given to the accused, having been given, this Court would not go into the aspect of sustainability the order of acquittal passed by the trial Court with regard to the opposite party no. 2 and his family members. However, such acquittal, in the absence of verifiable materials, cannot establish that a verdict has been given with regard to the authenticity of the allegation of demand of dowry against the opposite party no. 2 and his family members. Thus, based solely on such observations/findings of the trial Court, would not, in the opinion of this Court, be a ground for the



opposite party no. 2 to file a complaint alleging defamation. Moreover, the Court in its inherent jurisdiction under Section 482 of the Code is required to ensure that the process of the Court is not abused and more importantly that the ends of justice are secured. In the present case, the petitioner no. 1, who was the wife and has two children from the wedlock is now also divorced and living in her parents' home with the children and looking after them. Thus, she having suffered in life by not having a life partner and having to live in the parents' house and also raising two children alone, the ends of justice require that she and her family members are not harassed any further and the matter is finally put to rest.

8. For reasons aforesaid, the application is allowed. The order dated 04.03.2014 passed by the by the Judicial Magistrate, 1st Class, Araria in Complaint Case No. 4167 of 2012 taking cognizance against the petitioners stands quashed.

(Ahsanuddin Amanullah, J)

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