

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No. 28893 of 2014

Arising Out of Complaint Case No.-1671C Year-2012 Thana- PATNA COMPLAINT CASE
District- Patna

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Rahul Raj @ Chandan, Son of Sheodhari Singh, resident of E/82, P.C.
Colony, Kankarbagh, District Patna.

... .. Petitioner/s

Versus

1. State of Bihar
2. Arvind Kumar Singh, Son of Ambika Singh alias Akhilesh Prasad Sinha,
resident of P1/8, Vidhyanagar Colony, P.O. and P.S. Kankarbagh, District
Patna.

... .. Opposite Party/s

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Appearance :

For the Petitioner/s	:	Mr. Jai Vardhan Narayan and Mr. Sarvendra Kumar Verma, Advocates
For the State	:	Mr. Jharkhandi Upadhyay, A.P.P.
For the Opposite Party/s	:	Mr. Arun Kumar and Mr. Bipin Kumar, Advocates

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CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN
AMANULLAH
ORAL JUDGMENT

Date : 15-01-2019

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



2. The sister of the petitioner and the son of the opposite party no. 2 have also come to Court.

3. On 08.01.2019, the Court had recorded the following order:

“2. Two family members are bitterly fighting among themselves as there are various cases and counter cases, all resulting out of the failed marriage of the sister of the petitioner with the son of the opposite party no. 2.

3. Thus, the Court deems it appropriate to call the warring parties to explore the possibility of any settlement between them, failing which the Court shall proceed to decide the matter on merits.”

4. Today, learned counsel submitted that there is no chance of any settlement. Thus, the Court has proceeded to hear the matter on merits.

5. The petitioner has moved the Court under Section 482 of the Code of Criminal Procedure, 1973 (hereinafter referred to as the ‘Code’) for the following relief:

“That this quashing application is being filed on behalf of the petitioner for quashing the entire criminal proceedings against the petitioner in Complaint Case no. 1671 (C) of 2012 pending in the Court of Smt. Reshma, the learned Chief Judicial Magistrate, Patna under Sections 323, 341, 342, 504, 506, 386, 379, 120B, 34 of IPC and Sections 25A, 26 and 27 of the Arms Act and cognizance has been taken on 07.11.2012 u/s 341, 323, 504 IPC.”



6. The allegation against the petitioner and six others is of assault and snatching of gold chain and money. Against the petitioner, it is also stated that he along with his brother-in-law had taken out pistol and got blank papers signed by the son of the complainant.

7. Learned counsel for the petitioner submitted that the present is a total false and fabricated case. It was submitted that the sister of the petitioner had married the son of the opposite party no. 2, in a temple at Mumbai and affidavit was sworn by both the parties in this connection declaring their marriage. It was submitted that the marriage was performed on 27.04.2009 at Mumbai. It was submitted that within a few days only, the family members and the husband of the sister of the petitioner started torturing her for dowry, threatening that if the same was not met, the son of the opposite party no. 2 would marry someone else after divorcing the sister of the petitioner. It was further submitted that the sister of the petitioner was turned out of the matrimonial home on 12.06.2009 and had to return to her parent's place and request by the family members of the petitioner to the opposite party no. 2 and his family members to keep his sister was rejected. Learned counsel submitted that this forced the sister of the petitioner to file Complaint Case No. 2541(C) of 2009, before the Sub Divisional



Judicial Magistrate, Patna under Sections 498A of the Indian Penal Code and 3/4 of the Dowry Prohibition Act. Learned counsel submitted that in the said case, the son of the opposite party no. 2 had filed anticipatory bail petition which was rejected by the Court of Session and the High Court. Learned counsel further submitted that the opposite party no. 2 had also filed Cr. Misc. No. 3442 of 2013, to quash the entire criminal proceedings in connection with Complaint Case No. 2541(C) of 2009, in which the case against the son of the opposite party no. 2, i.e., the husband of the sister of the petitioner was dismissed as withdrawn. Learned counsel submitted that the said case was filed on 17.09.2009 and cognizance was taken on 19.01.2012. Learned counsel submitted that besides this, the sister of the petitioner also filed Domestic Violence Case No. 8 of 2012, against her husband, the opposite party no. 2, her mother-in-law and sister-in-law on 23.02.2012. Against the same, the accused i.e. opposite party no. 2 and others had moved the Court in Cr. Misc. No. 4361 of 2013 for quashing of the said case and by order dated 04.09.2013 the Court had dismissed the application seeking quashing of the Domestic Violence Case. Learned counsel submitted that in the meantime, the son of the opposite party no. 2 had filed M.P. No. 465 of 2009 at Kalyan in the State of Maharashtra for dissolving the marriage on



18.08.2009 in which an ex parte order for divorce has also been passed on 29.11.2010. Learned counsel submitted that the husband of the sister of the petitioner has the habit of marrying one after the other and then getting into litigation. In this connection, learned counsel submitted that the husband of the sister of the petitioner had married Tripti alias Tripti Kumari with whom also there were differences giving rise to Matrimonial Case No. 564 of 2013, filed by the son of the opposite party no. 2, seeking restitution of conjugal rights on 11.07.2013. However, it was submitted, that ultimately the parties divorced and the son of the opposite party no. 2 has again married for the third time. Learned counsel submitted that a plain reading of the complaint would show that the allegations are totally unnatural and unbelievable. It was submitted that even in the statement of witnesses who have deposed before the Court there are serious contradictions with what has been stated in the complaint petition. It was submitted that in the complaint, the allegation is that the petitioner and his brother-in-law, at the point of gun had got plain papers signed by the son of the opposite party no. 2, but the witness no. 2 namely, Gajendra Singh has not stated anything with regard to taking out of gun by the petitioner and the brother-in-law and further to a query of the Court he has stated that it was the complainant who



had told him about the accused and the incident. Learned counsel submitted that the second witness namely, Milind Kumar, has stated that it was the brother-in-law of the petitioner who had taken Rs. 15-20 thousand from the complainant. Learned counsel submitted that the said Milind Kumar has further stated that it was only the brother-in-law of the petitioner, who has taken out the gun. Learned counsel submitted that the witness Gajendra Singh has stated that it was the petitioner, who had got the papers forcibly signed by the son of the opposite party no. 2. Learned counsel submitted that there being so much material contradictions between the complaint, S.A. and the statement of witnesses, even the Court below found that the allegations under Sections 342, 506, 386, 379, 120B and 34 of the Indian Penal Code and 25A, 26 and 27 of the Arms Act have been added only to make the offence serious. Learned counsel further submitted that the allegation appears to be concocted and false for the reason that if at all the sister of the petitioner had taken Rs. 15,000/- and certificates at Mumbai, going to the house of the petitioner after three years and that too after getting an ex parte decree of divorce is absolutely unbelievable and untenable and there cannot be any truth in the same. Learned counsel submitted that further, the allegation in the complaint being that the sister of the petitioner had snatched away



gold chain from the neck of the son of the opposite party no. 2 is also unbelievable for she being a lady cannot be expected to do such act and even one of the witness has stated that it was the petitioner, who had done so. Learned counsel further submitted that there is also no explanation as to how the incident could have occurred when there were three other witnesses besides the son of the petitioner and the opposite party no. 2 himself and all being male members, as to why five persons were unable to prevent the incident. Learned counsel submitted that the allegation of assault by brick bats is completely false as no injury report with regard to any person has been brought on record. Learned counsel submitted that the falsity of the allegation would also be clear from the fact that in the S.A., to a Court query, the opposite party no. 2 has stated that the other sister of the petitioner, who was the daughter-in-law of the co-brother of the opposite party no. 2, wanted to get her sister married to the son of the opposite party no. 2 for which she was putting pressure and that was the reason for the incident. Thus, learned counsel submitted that the entire story of going to the house of the petitioner for return of the degree of opposite party no. 2 and Rs. 15,000/- is falsified by the statement before the Court of the opposite party no. 2 himself and that too in reply to a Court query.



8. Learned A.P.P. and learned counsel for the opposite party no. 2 submitted that the Court has taken cognizance on the basis of the materials before it and, thus, the petitioner is required to face trial in which they can prove their innocence. However, on a query of the Court that when the present application has also been filed for quashing of the entire complaint case, how the order of cognizance shall make any difference, they had no answer.

9. Having considered the facts and circumstances of the case and submissions of learned counsel for the parties, taking an overall view of the matter, the Court finds that a case for interference has been made out. In the present case, as has rightly been submitted by learned counsel for the petitioner, there being serious discrepancies in the complaint and the statement of witnesses and even the complainant himself in his answer to the Court query during S.A. having completely changed the cause of the alleged incident, as also one of the witnesses stating that whatever he has stated is on the basis of what he has been told as also there being serious contradictions of the role assigned with regard to the individual allegations against the accused varying from person to person and most importantly, even the Court below itself finding that the allegation under the Arms Act and various other Sections of the Indian Penal Code being added just to make



the offence serious and no *prima facie* case being made under such Sections, the entire complaint case itself appears to be a concocted story. Further, there being no explanation as to what concrete steps the opposite party no. 2 and his family members had taken if at all it was true that the sister of the petitioner had taken away the original degrees/certificates and Rs. 15,000/- from the son of the opposite party no. 2 more than three years back, clearly appears to be a lame excuse and is hard to believe. Further, once after having taken ex parte divorce and almost after a year of having married another girl i.e., Tripti alias Tripti Kumari and still approaching the petitioner and his family members and going their house also cannot be said to be believable. In this connection, the Court would refer to the decision of the Hon'ble Supreme Court in the case of **State of Haryana vs. Bhajan Lal** reported as **1992 Supp (1) SCC 335**, where at paragraph no. 102, categories have been laid down under which the Court would exercise its inherent power under Section 482 of the Code. The same reads as under:

“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 exercise.

(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 concerned Act (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 concerned Act, 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.”

10. In the opinion of the Court, the present case comes under categories 5 and 7 of the aforesaid judgment in the case of **Bhajan Lal** (supra).

11. Similarly, it is relevant to refer to the judgment of the Hon'ble Supreme Court in the case of **State of Karnataka v. L. Muniswamy** reported as (1977) 2 SCC 699, where at paragraph no. 7, the following has been held:

“7.In the exercise of this wholesome power, the High Court is entitled to quash a proceeding if it comes to the conclusion that allowing the proceeding to continue would be an abuse of the process of the Court or that the ends of justice require that the proceeding ought to be quashed. The saving of the High Court's inherent powers, both in civil and criminal matters, is designed to achieve a salutary public purpose which is that a Court proceeding ought not to be permitted to degenerate into a weapon of harassment or persecution. In a criminal case, the veiled object behind a lame prosecution, the very nature of the material on which the structure of the prosecution rests and the like would justify the High Court in quashing the proceeding in the interest of justice.....”

12. For reasons aforesaid, the application is allowed.

The entire criminal proceeding in Complaint Case No. 1671(C) of



2012 as well as the order taking cognizance dated 07.11.2012, as far at it relates to the petitioner, stands quashed.

(Ahsanuddin Amanullah, J.)

P. Kumar

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