

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Criminal Miscellaneous No. 38970 of 2013**

Arising Out of C.R. Case No.-679 Year-2013 Thana- DARBHANGA COMPLAINT CASE  
District- Darbhanga

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Firdaus Ali @ Tamanna S/o Late Noorul Hoda, Resident of Mohalla-  
Mahdauli, P.S.- Laheriasarai, District- Darbhanga.

... .. Petitioner/s

Versus

1. The State of Bihar.
2. Firoza Yasmeen @ Firoza Khatoon D/o Late Abdul Majid Resident of  
Village- Mohalla- Mahdauli, P.S.- Laheriasarai, District- Darbhanga.

... .. Opposite Party/s

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**Appearance :**

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|--------------------------|---|----------------------------------|
| For the Petitioner/s     | : | Mr. Krishna Kant Singh, Advocate |
| For the Opposite Party/s | : | Mr. Md. Shahnawaz Ali, Advocate  |
| For the State            | : | Mr. Jharkhandi Upadhyay, APP     |

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**CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN**  
**AMANULLAH**

**ORAL JUDGMENT**

**Date : 08-02-2019**

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

2. The 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 is an application for  
quashing the order dated 27.7.2013 passed by the  
learned Sub-Divisional Judicial Magistrate,  
Darbhanga in C.R. Case No. 679/13 (TR No.  
3573/13) whereby he has been pleased to hold that  
a prima facie case is made out against the  
petitioner under section 498A of the Indian Penal  
Code and process of summon be issued against  
him and consequently for quashing the entire  
criminal proceeding pending against the  
petitioner in connection with the present case.”*



3. The opposite party no. 2, who is the complainant has alleged that she had married the petitioner in the year 2003 and thereafter, on some pretext, she was not taken to the matrimonial home and later on a demand was made for motorcycle which the opposite party no. 2 fulfilled by giving Rs. 50,000/- and thereafter, it is alleged that thrice she was made to abort. It has further been alleged that the petitioner had tried to get rid of the complainant and also used to physically assault her and finally he along with others had come to the house of the complainant and had abused her and had also threatened that unless the land belonging to the mother of the opposite party no. 2 was not transferred in favour of the petitioner, she would not be kept in the matrimonial home.

4. Learned counsel for the petitioner submitted that the complaint is totally false and frivolous. It was submitted that the opposite party no. 2 was never married to the petitioner which would be clear from documentary evidence in support of such contention. It was submitted that nowhere in the complaint, there is any description or mentioning of the exact date of marriage or any of the witnesses before which such marriage took place which is mandatory under the personal law. It was submitted that the falsity of the case would be demolished by the conduct of the opposite party no. 2 herself when she had filed C.R. No. 1060 of



2006, before the Chief Judicial Magistrate, Darbhanga on 03.08.2006, in which the petitioner was accused no. 5 and the date of occurrence was disclosed as 01.08.2006 and the allegation was that the accused were trying to capture part of the land belonging to the maternal grandmother of the opposite party no. 2. Learned counsel submitted that the entire description of the said complaint which was later on converted into Laheriasarai P.S. Case No. 266 of 2006, there was not even a whisper that the petitioner was the husband of the opposite party no. 2. Learned counsel submitted that the petitioner in the said complaint has been also shown to have an alias Tamanna, whereas in the present case, he has been shown to have two alias, Tamanna and Tanweer. Learned counsel submitted that the petitioner at no point of time was ever known by the alias Tanweer and this alias was added in the present complaint only for the purpose of creating a document to lend support of the allegation of the petitioner having married the opposite party no. 2, inasmuch as, she had brought on record a document of the clinic of one Dr. Nupur Thakur, in which the Risk Bond discloses the name of her husband/father as Tanweer and the person who has signed has also disclosed his name as Tanweer which is dated 28.07.2011. It was submitted that the falsity of the document would be clear from the fact that in the column of



father/husband of the so called Tanweer, who has signed, the name written is Abdul Majeed. It was submitted that the petitioner's father is Nurul Hoda and not Abdul Majeed and further that the address of the said Tanweer is also Mohalla-Qilaghat, Lalbagh, Laheriasarai, Darbhanga.

5. Learned counsel submitted that the enmity between the petitioner and the opposite party no. 2 would also be clear from the fact that the petitioner was also a signatory to a public petition which was signed by many persons of the locality complaining about the activity of one Khalid Azam Khan @ Pyare Khan against whom the grievance was that he was a nuisance and used to demand extortion and that the opposite party no. 2 had relations with him and when they had objected to the opposite party no. 2 having such relationship, she used to abuse them. It was further alleged that the opposite party no. 2 had contacts with anti-social elements of the locality and such petition was filed before the Superintendent of Police, Darbhanga on 02.08.2006. Learned counsel further submitted that even against the opposite party no. 2, there was further complaint before the Superintendent of Police, Darbhanga on 19.04.2013, which is signed by 83 persons of the locality complaining against the anti-social activity and misconduct of the opposite party no. 2. It was submitted that



in the said petition, copies of which were also forwarded to the Inspector General of Police, Darbhanga; DIG, Darbhanga; SDPO, Sadar Darbhanga; SHO, Laheriasarai, Darbhanga and SHO, Mahila P.S. Laheriasarai, Darbhanga, it was clearly disclosed that for the last 15 years, the opposite party no. 2 was living illicitly in the house of the said Pyare Khan.

6. Learned counsel submitted that the opposite party no. 2 had submitted a complaint before the Women Helpline in Darbhanga and report was submitted by the Programme Manager, Women Helpline, Saidnagar, Darbhanga to the District Magistrate, Darbhanga dated 30.12.2013, in which the finding is that there is no proof with regard to the petitioner having married the opposite party no. 2 and the opposite party no. 2 lives with Pyare Khan with whom she has relationship. It was submitted that the people of the locality had protested before the police officers and the petitioner being a reporter of Rashtriya Sahara Urdu Newspaper had written about such illicit relationship between the parties and also about being made accused in a kidnapping case. Learned counsel submitted that the opposite party no. 2 had also filed M.R. Case No. 11 of 2013 seeking maintenance in which the Chief Judicial Magistrate, Darbhanga by order dated 22.04.2013 had directed the petitioner to pay Rs. 20,000/- as interim relief to



the opposite party no. 2 under Section 23 of the Domestic Violence Act. It was contended that in challenge to the same in Criminal Appeal No. 36 of 2013, by order dated 13.04.2014, the Ad hoc Additional Sessions Judge IV, Darbhanga had set aside the order of the Chief Judicial Magistrate, Darbhanga dated 22.04.2013 and had remanded the matter with a direction to hold inquiry with regard to factum of marriage and pass order in accordance with law. Learned counsel drew the attention of the Court to the order dated 20.09.2006, which the Chief Judicial Magistrate, Darbhanga had passed on such remand in which he held that the matter could not proceed unless the factum of marriage was decided and for which he was not the competent Court and the matter was required to be considered by the Family Court and accordingly M.R. Case No. 11 of 2013 was dismissed. It was submitted that the opposite party no. 2 preferred Criminal Appeal No. 49 of 2016 against the said order which was also dismissed on merit by judgment dated 15.11.2016 by the Sessions Judge, Darbhanga. It was submitted that the opposite party no. 2 has not moved against the said order of the Sessions Judge, Darbhanga.

7. Learned counsel also drew the attention of the Court to various certificates issued by the Ward Councillors of



Darbhanga Municipal Corporation dated 12.04.2017, 06.05.2015 and 17.05.2015, who had certified that the petitioner was still unmarried and further that the opposite party no. 2 was living in the house of Khalid Azam Khan @ Pyare Khan as wife and husband. Learned counsel drew the attention of the Court to Annexure-17 of the supplementary affidavit which is copy of portion of the voter list for the Municipal Election, 2012, where the name of opposite party no. 2 is at serial no. 299 and instead of her husband's name, the name of her father has been entered.

8. Learned counsel submitted that in the solemn affirmation by the opposite party no. 2 before the Court on 27.05.2013, in her deposition, in reply to the Court's query, she has clearly stated that she had filed the case only for going to her matrimonial home and to stop the husband from second marriage and there was no other reason. Learned counsel also drew the attention of the Court to the deposition of P.W. 1 namely, Baby Khatoon, who has also in reply to the query of the Court stated that the boy is not taking the opposite party no. 2 to the matrimonial home and only for this reason, the case has been filed and for no other reason. It was further pointed out that even P.W. 2 namely Sikandar Azam has stated that he was not aware when the case was filed and that in his presence no incident had taken



place and further that the petitioner had not made any demand of money. Learned counsel submitted that even P.W. 3, Zarina Khatoon had stated in her examination-in-chief that no dowry was given and only a motorcycle was given. Learned counsel submitted that it is also contrary to the stand in the complaint itself where it has been stated that the opposite party no. 2 had paid Rs. 50,000/- to the petitioner for buying a motorcycle. It was submitted that inherent material contradictions between the allegations made in the complaint and the statement of the witnesses recorded by the Court clearly prove that the whole case is without merit and in fact false.

9. Learned counsel submitted that the Court exercising its inherent power under Section 482 of the Code has the jurisdiction to look into the documents which are either admitted or which are official in nature and which can be relied upon. It was, thus, submitted that the petitioner having also moved for quashing of the entire criminal proceeding, the jurisdiction of the Court is not limited to merely considering the matter on technicalities relating to the Court below taking cognizance in the matter. For such proposition, learned counsel relied upon the decision of the Hon'ble Supreme Court in **All Cargo Movers (I) Pvt. Ltd. v. Dhanesh Badarmal Jain** reported as **2008 (1) PLJR**



(SC) 51, in which it has been held that under Section 482 the Court may not only take into consideration the admitted facts but also can look into the admitted documents as criminal proceedings should not be encouraged when it is found to be *mala fide* or otherwise an abuse of the process of the Court. Learned counsel also referred to the decision in **State of Haryana vs. Bhajan Lal** reported as **1992 Supp (1) SCC 335**, where the Hon'ble Supreme Court has enumerated categories under which the Court should exercise its inherent power under Section 482 of the Code at paragraph no. 102 of the said judgment. It was submitted that the case of the petitioner is covered under categories 5 and 7 of the aforesaid judgment at paragraph no. 102.

10. Learned counsel submitted that the petitioner in the capacity of an Advocate has also filed power on behalf of Anjum Ara who had filed Laheriasarai P.S. Case No. 86 of 2012 against the opposite party no. 2 and others and this also has made the opposite party no. 2 file cases against the petitioner only for the purpose of harassing him. Learned counsel submitted that initially in view of there being cognizance taken by the Court below, the petitioner has filed A.B.P. No. 1083 of 2013 before the District and Sessions Judge, Darbhanga but once there was stay granted in the present case on 20.09.2013, he had filed petition seeking



permission to withdraw the case, which was allowed on 25.10.2013. It was submitted that in the petition the ground was taken that since there was stay in the present case by the High Court, there was no longer any apprehension of his arrest and in this background, the prayer of the petitioner was allowed and the application was withdrawn.

11. Learned A.P.P. submitted that the Court below has taken cognizance on the basis of the materials before it. However, on a query of the Court with regard to the contradictions in the complaint petition and the statement of the witnesses, learned A.P.P. was not in a position to controvert the same. Further, he fairly submitted that in the case of **Bhajan Lal** (supra), the Court can take into account the facts which are based on records.

12. Learned counsel for the opposite party no. 2 vehemently opposed the application and submitted that under Section 190 of the Code, the Court is only *prima facie* supposed to look into the materials available and by doing the same has taken cognizance which is legal. It was submitted that the petitioner shall have opportunity to present his defence before the Court below at the time of framing of charge. On facts, it was submitted that the opposite party no. 2 had married the petitioner and further that the name Tanweer is also the alias name of the petitioner and



him having signed on the Risk Bond in the clinic clearly shows that he was the husband of the opposite party no. 2. He also relied upon a decision of the Hon'ble Supreme Court in **Nupur Talwar v. CBI** reported as **(2012) 2 SCC 188**, the relevant being at paragraphs no. 16 and 17, for the proposition that at the time of taking cognizance the Magistrate takes judicial notice of an offence with a view to initiating proceedings in respect of such offence which appears to have been committed and in the present case, the same having been done, requires no interference as at such stage, the Court has only to see *prima facie* whether there are reasons for issuing the process and whether the ingredients of the offence are there on record. However, on a query of the Court as to the jurisdiction of the Court under Section 482 of the Code for preventing abuse of the process of the Court and to otherwise to secure the ends of justice, on the basis of materials which have been filed by the opposite party no. 2 before various authorities and Courts below, learned counsel was not in a position to controvert or disown the same.

13. Learned counsel submitted that out of the 18 annexures brought on record on behalf of the petitioner, the Public Petition dated 19.04.2013, the Public Petition dated 02.08.2016, the Public Petition filed before the Superintendent of Police,



Darbhanga signed by more than 50 persons, copy of which is Annexure 11 to the application and the certificates granted by the Ward Councillors, Darbhanga Municipal Corporation namely, Dinesh Sahni dated 12.04.2017 and 06.05.2015, Hafza Jamal Praveen dated 17.05.2015 and Nafisul Haque dated 17.05.2015, are forged and fabricated. On a query of the Court, as to why such specific statement with regard to such annexures being forged and fabricated has not been made, learned counsel has referred to the statement made by him in paragraph no. 5 of his counter affidavit, in which it has been stated that other annexures are an afterthought and manufactured documents without there being any reference to any particular of annexure. Thus, the Court sought the stand of learned counsel for the opposite party no. 2, with regard to each and every annexure of the application and the supplementary affidavit filed on behalf of the petitioner and only the above four annexures out of 18 annexures have been disputed by him as being forged and fabricated. It was further submitted that the signature in the name of Tanweer at Annexure-10 on the Risk Bond dated 28.07.2011 can be got verified from the forensic experts. At this juncture, on a query of the Court as to how the name of the father was written as Abdul Majeed and a different address given, learned counsel had no answer except for



submitting that even while writing the name of the father, the petitioner has tried to mislead. Learned counsel for the opposite party no. 2 submitted that she has moved before the High Court in the year 2017 against the order of Sessions Judge dated 15.11.2016, though such fact has not been stated in the counter affidavit or the Interlocutory Application filed on her behalf.

14. 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.

15. At the very beginning, the Court would indicate that the facts which have come before the Court and which are admitted and not disputed by the the opposite party no. 2 are sufficient to indicate that the present prosecution is absolutely *mala fide* and frivolous. The opposite party no. 2 claiming that she was married in the year 2003 and thereafter filing a case in the year 2006 against the petitioner and four others in which she has not described him as her husband and has also made him an accused without giving any alias name is one strong indicator that she was not married to the petitioner in the year 2003, as she could not have been ignorant of the alias name of the person she claims to have married more than three years prior to filing such complaint. Thereafter, there being a case filed by one Anjum Ara



in the year 2012 and the petitioner filing power on behalf of the said informant in which the opposite party no. 2 was also an accused has not been controverted by the opposite party no. 2. Further, the fact that the Ad hoc Additional Sessions Judge IV, Darbhanga has recorded a finding that the fact of marriage is disputed and unless such fact is resolved, the opposite party no. 2 cannot claim any benefit or relief based on her mere allegation of being the wife of the petitioner and such contention which was also later reiterated by the Sessions Judge, Darbhanga, it is apparent that merely on the statement of the opposite party no. 2 that she is the wife, a criminal prosecution cannot be allowed to proceed in the present case. A very stark reality which is borne out is the fact that in the complaint the allegation is of torture and abuse and demand of either dowry/ motorcycle and pressure to get the land in the name of the mother of the opposite party no. 2 transferred in favour of the petitioner, is totally negated by the statement of the opposite party no. 2 herself and the three witnesses examined in support of the complaint case by the Court below. In their evidence, the complainant herself has admitted in her reply to a Court question that for going to the house of the husband and preventing him from marrying again the case has been filed and except this, there is no other reason. The same has



also been stated by P.W. 1 and further P.W. 2 stating that there was no demand of any money and in his presence no incident had taken place and P.W. 3 stating that at the time of marriage though no money was given but a motorcycle was given, is sufficient to establish that the present complaint case is totally malicious with the intention to harass the petitioner. Moreover, the denial of existence of the public complaint petitions coming merely in the oral submissions of learned counsel for the opposite party no. 2 during the course of arguments cannot be given much importance, especially in the background that when the Court asked learned counsel for the opposite party no. 2 as to why he has not filed any application seeking action against the petitioner for having brought on record forged and fabricated documents, there was no answer forthcoming.

16. The reliance of learned counsel for the opposite party no. 2 on the judgment in **Nupur Talwar** (supra) is not relevant in the facts and circumstances of the present case for the reason that this Court is exercising jurisdiction under Section 482 of the Code and not merely looking as to whether there was material before the Court below to take cognizance. Even on this point, in view of the inherent contradictions, which are material and serious enough to indicate that the allegations made in the



complaint were not correct, the Court finds that even the basic requirement of there being sufficient material before the Court to come to the conclusion that ingredients are made out, which are lacking in the present case, such order also cannot be sustained. Moreover, taking an overall view, the Court finds that the decision of the Hon'ble Supreme Court in **All Cargo Movers (I) Pvt. Ltd.** (supra), relied upon by learned counsel for the petitioner clearly gives the power of the Court under Section 482 to look into the admitted facts and admitted documents so as not to encourage criminal proceeding when it is found to be *mala fide* or otherwise an abuse of the process of the Court. Similarly, in the case of **Bhajan Lal** (supra), as has rightly been pointed out by learned counsel for the petitioner, the Court under Section 482 of the Code is required to exercise inherent power under various situations of which seven instances have been enumerated in the judgment at paragraph no. 102, which 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.”*

17. The Court is also in agreement with the contention that the present case is covered under categories 5 and 7 of the aforesaid judgment.

18. Further, the Hon’ble Supreme Court in **State of Karnataka v. L. Muniswamy** reported as **(1977) 2 SCC 699**, at paragraph no. 7, has observed as under:

*“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. The ends of justice are higher than the, ends of mere law thought justice has got to be administered according to laws made by the legislature. The compelling necessity for making these observations is that without a proper realisation of the object and purpose of the provision which seeks to save the inherent powers of the High Court to do justice between the State and its subjects it would be impossible to*



*appreciate the width and contours of that silent jurisdiction.”*

19. Thus, even on the basis of admitted documents and the conduct of the petitioner at various stages before various authorities/forums and the inherent contradictions between the averments made in the complaint petition and the statement recorded before the Court leaves no doubt that the prosecution is *mala fide*, untenable and solely intended to harass the petitioner.

20. For reasons aforesaid, the application is allowed. The entire criminal proceeding arising out of C.R. Case No. 679 of 2013 (T.R. No. 3573 of 2013), including the order dated 27.07.2013, by which cognizance has been taken against the petitioner, stands quashed.

21. Interlocutory Application No. 535 of 2017 filed for vacating the interim stay, having become infructuous, stands disposed off.

**(Ahsanuddin Amanullah, J)**

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