

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.6293 of 2015

Arising Out of Case No.-1326 Year-2013 Thana- PURNIA COMPLAINT CASE District- Purnia

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1. Onkar Roy @ Onkar Pd. Ray S/o Late Sachidanand Rai
2. Indu Devi @ Indu Rai W/o Onkar Roy
Both R/o Vill - Mangira, Gauripur, P.S. - Banka, District - Banka.
... .. Petitioner/s

Versus

1. The State Of Bihar
2. Sulochana Devi W/o Sri Onkar Roy, permanent r/o Vill - Mangira, Gauripur, P.S. - Banka, District – Banka, at present Pratapnagar, Madhubani, P.S. - K. Hat, Madhubani, District - Purnea.
... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Amresh Kumar Sinha, Advocate
For the State : Mr. Mr. Arif, APP
For the O. P. No. 2 : Mr. Sanjay Singh, Advocate

CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH
ORAL JUDGMENT

Date : 19-06-2019

Heard learned counsel for the petitioners; learned APP
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, 1973 (hereinafter referred
to as the ‘Code’) for the following relief:

*“ That this is an application for quashing of the
summoning and order taking Cognizance dt.
12/06/2014 for the offence under section
504/323 of I.P.C. against the petitioner no. 2 in
Compl. Case No. 1326/2013 by the Court of
Sri. Ranvijay Kumar, J.M. 1st Class, Purnea, is
directed in the following facts and
circumstances of the case”*

3. The allegation against the petitioners is that they had
come to the house of the opposite party no. 2-complainant on



11.05.2013 and had tried to force her to sign papers with regard to withdrawal of the maintenance case filed by her against the petitioner no. 1 and had assaulted and humiliated her and it is further alleged that the petitioner no. 2 had taken away Rs. 7,500/- from the box kept by the opposite party no. 2.

4. Learned counsel for the petitioners submitted that the opposite party no. 2 was married to petitioner no. 1 on 24.06.1986 and the opposite party no. 2 also has given birth to a female child on 03.12.1988. It was submitted that in Title Suit No. 257 of 2001 filed by the opposite party no. 2 and her daughter against petitioner no. 1, initially he was paying maintenance, both to the opposite party no. 2 and her daughter, but lastly by order dated 30.03.2015, he is paying only Rs. 5,000/- per month to the daughter as the opposite party no. 2 is now earning. It was further submitted that the petitioner no. 1 has also deposited Rs. 2,00,000/- for the purpose of marriage of the daughter of the opposite party no. 2 but despite she being almost 31 years of age, the opposite party no. 2 is not getting her married and unnecessarily the petitioners are being made to pay maintenance with *mala fide* intention. It was submitted that the allegation of the petitioners coming to the house of the opposite party no. 2 and staying there for the whole day and then forcing her to sign papers and abusing her is unbelievable in



the background of the past enmity and litigation between the parties. It was further submitted that it also cannot be believed that the petitioners would come to the locality of the opposite party no. 2 and would make such an attempt knowing fully well that persons and neighbours around the house would naturally be sympathetic towards the opposite party no. 2. Learned counsel submitted that only to exert pressure on the petitioners to pay further money the present case has been instituted.

5. Learned APP submitted that based on the materials before the Court, cognizance has been taken.

6. Learned counsel for the opposite party no. 2 has filed counter affidavit and submitted that the incident did take place and there is sufficient material before the Court to have taken cognizance which does not require any interference.

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. The relationship between the parties and the fact that there is past enmity which is being bitterly fought and maintenance from time to time having been enhanced, initially both to the opposite party no. 2 and her daughter and subsequently in the year 2015 only with regard to the daughter of Rs. 5,000/- per month



together with the fact that Rs. 2,00,000/- has been deposited for the purpose of her marriage and she is almost 31 years old, the Court finds that such allegation of assault and abuse and, that too, in the house of the opposite party no. 2 for the purposes of withdrawing the maintenance case cannot be believed. Further, the matter basically relating to a dispute between the petitioners and the wife of petitioner no. 1 and there being also another woman involved, who is the daughter of the opposite party no. 2, especially taking note of the fact that the final orders have also been passed by the Court below in Title Suit No. 257 of 2001 on 30.03.2015 allowing payment of Rs. 5,000/- per month to the daughter of the opposite party no. 2 by the petitioner no. 1 till the date of her marriage, sufficiently protects the interest of the opposite party no. 2 and her daughter and the acrimony between the parties, who are closely related, is required to be put to an end. Even otherwise, on the civil side, the matter is still subjudice as the petitioner no. 1 has already moved the Court against the order dated 30.03.2015 in Title Suit No. 257 of 2001. Thus, as far as the present criminal case is concerned, in the background of the discussions made hereinabove, the same needs to be interfered with.

9. In this connection, the Court would refer to the decision of the Hon'ble Supreme Court in **State of Haryana v.**



Bhajan Lal, reported as **1992 Suppl. (1) SCC 335**, where at paragraph no. 102, categories have been enumerated where the Court ought to 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 exercised.

(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 omission 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. The present case, in the opinion of the Court, is covered under category 7 of the aforesaid judgment in **Bhajan Lal** (supra) at paragraph no. 102.

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



“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 arising out of Complaint case No. 1326 of 2013, pending before the Court below at Purnea, including the order dated 12.06.2014 by which cognizance has been taken, stands quashed.

(Ahsanuddin Amanullah, J)

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