

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.17265 of 2017

Arising Out of PS. Case No.-1149 Year-2015 Thana- BHABHU(KAIMUR) COMPLAIN C
District- Kaimur (Bhabua)

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1. Anuja Devi @ Pushpi, D/o Late Pramod Kumar.
 2. Sudhanshu Shekhar @ Manoj.
 3. Himanshu Shekhar @ Munna,
 4. Subhranshu Shekhar @ Nunu @ Sumanshu Shekhar, All son of late Pramod Kumar,
 5. Lila Kuar @ Lila W/o Late Pramod Kumar, All R/o HI- 17, Harmu Housing Colony, P.S.- Argora, District- Ranchi Jharkhand.
 6. Prabhat Pathak @ Prabhat Kumar Pathak, S/o Sri Binod Ram Pathak, R/o Village- S.R. Colony, Chandwa, District- Latehar Jharkhand.

... .. Petitioner/s

Versus

1. The State of Bihar
2. Anil Kumar Das, S/o Angad Das, R/o village- Bhabhua, Ward No. 13, P.S. Bhabhua, District- Kaimur Bhabhua.

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Upendra Mishra
For the Opposite Party/s : Mr. Jai Narain Thakur

CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI
ORAL ORDER

5 19-04-2019 Heard learned counsel for the petitioners as well as
learned Additional Public Prosecutor.

All the petitioners are wife as well as her Naiharwala of the O.P. No.2, who had filed Complaint Case No.1299 of 2015, divulging the fact that marriage was solemnized with petitioner no.1 Anuja Devi @ Pushpi in the Year 1997. After coming to her sasural, her activity found detrimental to her family and further, after having been employed in the Year 2008



at Chandwa, Latehar Block, she began to live in unruly manner and further, got herself married with Prabhat Pathak (Petitioner No.6). It has also been disclosed that they are leading their life as spouse. It has further been disclosed that on 30.08.2015 his wife along with Prabhat Pathak and Subhranshu Shekhar @ Nunu @ Sumanshu Shekhar came over vehicle bearing Registration No.JH-01-8E-7222 and further, they disclosed to Prabhat Pathak that this happens to be first sasural of Anuja Devi, up-till-now, no divorce has been effected, whereupon they will have to pay the maintenance as well as share. On query by him, they indulged in an altercation and further, also thrashed. During course thereof, accused Sumanshu Shekhar snatched away one chain. The aforesaid complaint petition was proceeded with an inquiry under Section 202 of the Cr.P.C. and vide order dated 20.01.2017, the order impugned, the learned lower Court of A.C.J.M.-4th, Kaimur at Bhabua took cognizance of an offence punishable under Section 323, 379 of the I.P.C. and summoned the petitioners, subject matter of instant petition.

It has been submitted at the end of the petitioners that all the allegations whatever been alleged are false, frivolous, malicious and the same has been filed in the background of a Criminal Case having drawn up at the end of the petitioner



Anuja Devi @ Pushpi bearing Doranda P. S. Case No.207 of 2003 against the O.P. No.2 and others for an offence punishable under Section 498A of the I.P.C. and Section 3/4 of the D. P. Act. It has also been submitted that father-in-law of the petitioner namely Angad Das had also filed one Complaint Case bearing No.81 of 2015 (Annexure-3) and the order of cognizance is under challenge with regard to Cr. Appeal No.22294 of 2015 (Annexure-4). It has also been submitted that petitioner Anuja Devi has also instituted a case bearing Complaint Case No.1069 of 2014. It has also been submitted that O.P. No.2 is a police personnel and is bent upon to ruin the life as petitioner Anuja Devi could not allow herself to be a mulching cow. Although, no document has been filed, but there happens to be also disclosure with regard to filing of Matrimonial Case No.6 of 2000 and that has been dismissed upto the High Court relating to M.A. No.690 of 2009.

Two aspects are always involved whenever an order of cognizance is under challenge. The first happens to be the propriety of the order. In the background of the fact that at the moment of taking of cognizance, only a prima facie case has to be seen and on that very score, the order impugned is found in accordance with law. The second aspect is with regard to malicious prosecution



and for that, there happens to be sufficient material at the end of the petitioners to justify their contention. In ***State of Hariyana & Ors. Versus Bhajan Lal & Ors. AIR 1992 SC 604***. The Hon'ble Apex Court has identified following categories including others wherein prosecution can be quashed and those are :-

“(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, on 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 grounds for proceedings 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 proceedings 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 malafide 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.”

Regard being had to the facts and circumstances of the case, it is apparent that it happens to be out an out a malicious prosecution and on account thereof, the criminal Court should not be allowed to become a tool of unscrupulous litigant in order to satisfy personal grudge.

Accordingly, the order impugned is set aside.
Petition is allowed.

(Aditya Kumar Trivedi, J)

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