

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No. 42610 of 2014

Along with
Interlocutory Application No. 2489 of 2017

Arising Out of P.S. Case No.-70 Year-2001 Thana- KATRA District- Muzaffarpur

-
1. Md. Nizam Ahmad @ Md. Nizam, Son of Md. Mohsin.
 2. Md. Mohsim Son of Late Badrul Hassan.
 3. Sagira Khatoon, Wife of Md. Mohsin.
 4. Md. Neyaz, Son of Md. Mohsin.
- All are Resident of Village -Maheshpatti, P.S. Singhwara, District-Darbhangha, A/P Village + Post - Janta Nagar Ramol Road, Behind Moon Ligh Chemical Shurti Shop, Mohammad Nagar, Ahmadabad (Gujrat).

... .. Petitioner/s

Versus

1. The State of Bihar
2. Abdul Wohab, Son of Aijul Rahman, Resident of Village - Tehwar, P.S. Katra, District-Muzaffarpur.

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr. Manindra Kishore Singh and Mr. Sanjay Mandal, Advocates
For the State	:	Mr. Jharkhandi Upadhyay, Advocate
For the Opposite Party/s	:	None.

CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN
AMANULLAH

ORAL JUDGMENT

Date : 08-03-2019

Heard learned counsel for the petitioners and learned
A.P.P. for the State.

2. Despite, upon notice to opposite party no. 2 and
learned counsel entering appearance and name of learned counsel
also appearing in the cause list, nobody appeared when the matter
was taken up and heard.



3. 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 on behalf of above named petitioners for quashing the order dated 28.08.2014 passed by learned VIth Addl. Sessions Judge, Muzaffarpur in S.Tr. No. 09/2012 by which learned court has rejected application under section 227 of the Cr.P.C. filed by petitioners to discharge them from the case which has been registered under section 304 (B) and 201 of the I.P.C.”

4. The opposite party no. 2, whose daughter was married to the petitioner no. 1 had filed Complaint Case No. C-2439 of 2001 before the Chief Judicial Magistrate, Muzaffarpur against the petitioners alleging that on account of demand of dowry, his daughter was murdered by them. The same was sent to the police leading to institution of Katra P.S. Case No. 70 of 2001, in which, after investigation, the police submitted final report treating it to be a case of mistake of fact. The opposite party no. 2 filed protest petition on 09.11.2004, which was treated as Complaint Case No. C-116 of 2005. After the Court holding enquiry under Section 202 of the Code, Complaint Case No. C-116 of 2005 was dismissed on 12.04.2006 under Section 203 of the Code. The opposite party no. 2 filed Criminal Revision No. 107 of 2006, which was allowed by order dated 24.03.2009, and



the matter was remanded for fresh consideration resulting in issuing of summons under Section 204 of the Code by order dated 10.09.2009. The petitioners then filed application under Section 227 of the Code for discharge which has been rejected by order dated 28.08.2014. Subsequently, during the pendency of the case, charge has also been framed against the petitioners by order dated 24.07.2015 under Sections 302/34, 304(B)/34 and 201/34 of the Indian Penal Code. The same has been assailed in the Interlocutory Application No. 2489 of 2017.

5. Having regard to the fact that the order framing charge has been passed during the pendency of the present application and is a direct consequence of the initial order impugned in the application, the prayer made in the Interlocutory Application stands allowed. The order dated 24.07.2015 framing charge against the petitioners shall form part of the relief claimed in the main application. Interlocutory Application No. 2489 of 2017 stands disposed off.

6. Learned counsel for the petitioners submitted that the entire criminal prosecution, both in terms of the Complaint Case No. 2439 of 2001/Katra P.S. Case No. 70 of 2001 as well as Complaint Case No. C-116 of 2005 are false and frivolous. It was submitted that the daughter of the opposite party no. 2 was



married to the petitioner no. 1 on 25.03.2001 and thereafter, upon *bidagari*, she was taken by the petitioners to Ahmedabad on 17.08.2001. It was submitted that the daughter of the opposite party no. 2 was suffering from tuberculosis for which she was on medication but hid the said fact and was asked not to take medicine so as not to reveal the ailment. Learned counsel submitted that upon being taken to Ahmedabad, when the daughter of opposite party no. 2 became seriously ill, she was treated at various places and finally in the hospital of Dr. Rajendra Dalal at Ahmedabad where she was admitted on 17.10.2001 and died on 28.10.2001. It was submitted that the doctor had given certificate that she died due to perforation of intestine on 28.10.2001 on account of suffering from typhoid fever and pulmonary tuberculosis. Learned counsel submitted that the police had conducted investigation at Ahmedabad from where such facts surfaced and even the neighbours of the petitioners were examined and nobody had made any complaint with regard to any maltreatment of the daughter of the opposite party no. 2. Learned counsel submitted that initially the Court below had dismissed the complaint based on the protest petition after fully noticing and appreciating the materials including the statement of the witnesses. It was contended that only due to the order of remand



by the superior court, the Court below has mechanically issued summons against the petitioners without there being any material to justify the same. Learned counsel submitted that before the Court when a protest petition is being considered, the Court, but naturally, would be in a position where before it there is a report of the police after full investigation and which being relevant material for the Court to proceed is required to be taken note of. Learned counsel submitted that the Court below while rejecting the prayer for discharge has also noted that it cannot go into the finding of the police in the case diary which is totally erroneous, as the cognizance has been taken by the Court based on a protest petition in the original police case and, thus, the two cases are inter-connected and there cannot be segregation of materials in the original police case with the protest petition. Learned counsel submitted that on the same material before the Court when once an order had been passed dismissing the protest/complaint case, taking a cognizance subsequently, without any fresh material, is totally unsustainable. Learned counsel submitted that even on facts, it is highly unbelievable and improbable that at the very first instance when the girl is taken after *bidagari* she would be killed without giving any time to her family to satisfy the demand of dowry. Learned counsel submitted that the marriage having taken



place in March and the daughter of opposite party no. 2 being taken to Ahmedabad in August and after that there being no complaint or allegation that the daughter of the complainant had ever communicated to her relatives with regard to her maltreatment due to demand of dowry, the allegation clearly is with *mala fide* intention. Learned counsel referred to the decision of the Hon'ble Supreme Court in **Ajay Singh vs. State of Chhattisgarh** reported as **2017 (1) PLJR (SC) 395**, for the proposition that at the stage of Section 227 of the Code, the Judge has to sift the evidence in order to find out whether or not there is sufficient ground for proceeding against the accused. It was submitted that in the present case, the evidence on record included the police investigation and not taking into account the same was clearly erroneous as the matter arose out of a protest in that police case. Learned counsel also referred to the decision of the Hon'ble Supreme Court in **Dilawar Balu Kurane v. State of Maharashtra** reported as **(2002) 2 SCC 135**, for the proposition that while considering application under Section 227 of the Code, where two views are equally possible and evidence gives rise to some suspicion but not grave suspicion he can discharge the accused.



7. Learned counsel summed up his argument by raising a purely legal point of jurisdiction. It was submitted that when, admittedly, the alleged offence is said to have taken place in Ahmedabad in the State of Gujarat, no criminal proceeding is maintainable in Bihar. For such proposition learned counsel referred to Section 177 of the Code.

8. Learned A.P.P., upon going through the case diary of Katra P.S. Case No. 70 of 2001, did not controvert the fact that the police after holding investigation at Ahmedabad and recording the statement of the doctor, who treated the deceased had submitted final report holding it to be a mistake on fact. It was also not controverted that the doctor has certified the death to have taken place on account of typhoid fever and pulmonary tuberculosis leading to perforation of intestine, after eleven days of being admitted in the hospital. Further, he fairly conceded that on the point of jurisdiction, criminal proceeding in the State of Bihar is not maintainable.

9. 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. Learned counsel for the petitioners is correct in his contention that it is unbelievable and no prudent man would accept that on the first



bidagari itself any girl would be done to death by the in-laws. Even in the complaint, it is stated that while taking the girl the petitioners had demanded Rs. 40,000/- for a motorcycle and Rs. 60,000 for making house and had threatened that if the same was not done, it would result in serious consequence for the girl, thus, without waiting for a reasonable period for the family of the deceased to fulfill the demand, killing the girl right away appears to be highly improbable. Moreover, in the opinion of the Court, when the opposite party no. 2 was examined on solemn affirmation, he has admitted that he did not go to Ahmedabad after being informed about the death of the daughter, clearly indicates that he had no valid ground to make the allegation of his daughter being killed by the petitioners. Further, the police having gone to Ahmedabad and recording the statement of the neighbours of the petitioners and most importantly the doctor, in whose hospital the victim girl was treated for eleven days and where she died, and he having certified that the death was due to a disease and not attributable to any unlawful act of the petitioners, clearly cannot be ignored. Moreover, the Court below once having carefully considered the material before it and having dismissed the complaint, there being no fresh material before it and still proceeding to take cognizance and issue summons again appears



to be only by way of formality and a result of remand by a superior court. This clearly does not satisfy the requirement of the Court having to carefully consider all materials before it before coming to a decision.

10. In the present case, there is sufficient and reliable materials, which have remained uncontroverted, to establish that the death of the daughter of the opposite party no. 2 occurred as a result of a disease she was suffering from and which was left untreated due to the same not being disclosed to the in-laws and which has been certified by the doctor himself, coupled with the fact that neither the opposite party no. 2 nor any of his relatives ever went to Ahmedabad to ascertain any fact, is a strong indicator that the allegation levelled against the petitioners by the opposite party no. 2 does not have any sound basis.

11. In this connection, the Court would refer to the decision of the Hon'ble Supreme Court in **State of Haryana vs. Bhajan Lal** reported as **1992 Supp (1) SCC 335**, where at paragraph no. 102 categories have been enumerated where the Court ought to interfere under its inherent powers 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.”

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

13. 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.....”

14. Moreover, in the present case, clearly the incident, even as per the opposite party no. 2, occurred outside the State of



Bihar and, thus, rightly learned counsel has taken the point of jurisdiction that no criminal proceeding for the said alleged occurrence is maintainable in the State of Bihar.

15. For reasons aforesaid, the Court finds that the present prosecution is clearly *mala fide* with the intention to wreak vengeance and harass the petitioners.

16. Accordingly, the application is allowed. The entire criminal proceeding arising out of Complaint Case No. C-116 of 2005, including the order taking cognizance as well as all consequential orders stand quashed.

17. The case diary be returned forthwith.

(Ahsanuddin Amanullah, J.)

P. Kumar

AFR/NAFR	
U	
T	

