

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.13574 of 2018

Arising Out of PS. Case No.-96 Year-2016 Thana- PUPRI District- Sitamarhi

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1. Binod Jha, Son of Krishna Dutt Jha.
2. Mausam Devi, Wife of Binod Jha.
Both Resident of Village Jhajhihut Tole Hardiya, P.S. Pupri, District- Sitamarhi.

... .. Petitioner/s

Versus

1. The State of Bihar.
2. Manorama Devi, Wife of Shushil Jha, Resident of Village Jhajhihut Tole Hardiya, P.S. Pupri, District- Sitamarhi.

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr. Mahendra Thakur, Adv. Mr. Sanjay Kumar, Adv.
For the State	:	Smt. Veena Kumari Jaiswal, APP
For the informant	:	Mr. Madhusudan Rai, Adv.

CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI
ORAL ORDER

4 31-01-2019 Heard learned counsel for the petitioners as well as
learned A.P.P along with learned counsel for the O.P. No.2.

Gone through different annexures having annexed including that of the Complaint Petition No.126/2016, filed at the end of O.P. No.2 which was sent to the local police for registration and investigation whereupon Pupri P.S. Case no.96/2016 has been registered wherein, after investigation, the police had submitted final report as untrue however, differing therefrom the learned Additional Sessions Judge-cum-Special Court, POCSO took cognizance of an offence punishable under Section 364, 323/34, 506 of the IPC vide order dated 05.12.2017 against which, instant petition has been filed.



After going through the relevant annexures including the complaint petition, it is evident that petitioner no.1 is Debar and O.P. No.2 is Bhabhi. There happens to be land dispute amongst them and in the aforesaid background apart from partition suit several criminal cases cropped up which ultimately given a light either at the lowest level or at the present level, Annexure-3 (order dated 17.11.2014 passed in Cr. Misc. No.20342/2008) having similar kind of allegation relating to husband and now, the same has been levelled with regard to unsuccessful attempt to kidnap Uma Kumari, daughter of O.P. No.2.

From narration of the complaint petition, it is evident that at a first instance there happens to be presence of these petitioners who tried to persuade the Uma to accompany them to Nepal where Nawal Pathak, Bekal Pathak and Govind Pathak were who will facilitate her marriage and further, they also threatened that on refusal her brother as well as mother will be murdered. On protest, both of them dragged her whereupon she raised hue and cry however, were joined by other co-accused but, on alarm having raised at the end of the Uma, Basant (son) came seeing whom, the accused persons fled away. Furthermore, they have also assaulted during midst thereof.



Although, the complaint petition was filed under POCSO Act but, there happens to be no disclosure at the end of the complainant with regard to status of Uma Kumari to be minor and further, there was no occasion for the learned lower court to infer. In **State of Hariyana & Ors. Versus Bhajan Lal & Ors** reported in *AIR 1992 SC 604*, it has been held:

“(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.”

The *inter-se* relationship, the conduct of the parties the allegation whatever been attributed did not justify falling under category 5 so prescribed under the Bhajan Lal case, consequent thereupon, the order impugned relating to the petitioners is set aside. Petition is allowed.

(Aditya Kumar Trivedi, J.)

Prakash Narayan

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