

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.6231 of 2016

Arising Out of PS. Case No.-1143 Year-2015 Thana- ROHTAS COMPLAINT CASE
District- Rohtas

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1. Krishna Bihari Singh Son of late Parikha Singh
 2. Ashok kumar@Ashok kumar Singh
 3. Shashi Ranjan Kumar@Guddu Kumar Both sons of Krishna Bihari Singh
- All Resident of Village- Dihra, Police Station Dinara, District Rohtas.

... .. Petitioner/s

Versus

1. The State of Bihar.
2. Rakesh Kumar Singh Son of Barister Singh Resident of Village- Mohamadpur, Police Station Sheosagar (Baddi), District Rohtas, at Present Resident of Mohalla- Jadav Mohalla- Gaurakashni , North of Kali Mandir, House of Sheo Shankar Singh.

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr. Sanjay Kumar Tiwary, Advocate
For the O.P. No. 2	:	Mr. Baxi S. R. P. Sinha, Sr. Advocate with Mr. Babunandan Prasad and Mr. Ashutosh Tripathi, Advocates
For the State	:	Mr. Jharkhandi Upadhyay, APP

CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH
ORAL JUDGMENT

Date : 09-01-2019

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

2. Pursuant to order dated 29.11.2018, the opposite party
no. 2 is also present in Court.



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 for quashing the order dated 9.11.2015 passed in complaint Case No. 1143 of 2015 (T.R. No. 736 of 2015) passed by learned Additional Chief Judicial Magistrate, Rohtas at Sasaram whereby and whereunder learned Additional Chief Judicial Magistrate, Rohtas at Sasaram pleased to took cognizance against all petitioners under sections 504, 506, 406 of the Indian Penal Code.”

4. The petitioner no. 1 is the father-in-law of the opposite party no. 2 (complainant) and petitioners no. 2 and 3 are sons of petitioner no. 1. The allegation against them is of taking Rs. 3,50,000/- and not returning the same and further of threatening with dire consequences demanding further money.

5. Learned counsel for the petitioners submitted that the present case has been filed on 25.08.2015 as a counter blast to Sasaram Town P.S. Case No. 928 of 2015 which was filed by the wife of the opposite party no. 2 on 14.08.2015 against him alleging offences under Sections 498A/34 of the Indian Penal Code and 3/4 of the Dowry Prohibition Act against the opposite party no. 2 and his mother. Learned counsel submitted that in the F.I.R., the allegation was that the opposite party no. 2 used to consume liquor



and abuse and assault the informant and also taunt her for giving birth to two girls. Learned counsel submitted that from the plain reading of the complaint, the entire story appears to be totally unnatural and even absurd. It was submitted that the opposite party no. 2 living in the town of Sasaram would call the petitioners who are living far away in their village at Dihra under police station Dinara for giving Rs. 3,50,000/- to them for safe keeping without the petitioners taking the money or giving it to the person for whom it had been withdrawn from the Bank, is difficult to believe. Learned counsel submitted that in the background of strained relationship between the husband and the wife, the fact that the petitioners would come at the calling of the opposite party no. 2 and further that the opposite party no. 2 would give a such huge amount to them is totally unbelievable. Learned counsel further submitted that the present complaint case being filed only to counter the case filed by the wife of the opposite party no. 2 would be apparent from the fact that in the complaint, the opposite party no. 2 has stated that the petitioners had threatened that if the opposite party no. 2 did not give him the remaining amount, they would get a case under the Dowry Act lodged against him. Learned counsel submitted that the wife of the opposite party no. 2 had lodged the case in Sasaram Town P.S., as, at the relevant



point of time, she was living with him and, thus, the falsity of the complaint case would be further proved where it has been stated that she used to live with the opposite party no. 2 for short periods. Learned counsel submitted that the opposite party no. 2 not even indicating that his wife was living with him on 13.08.2015 and 14.08.2015 is also indicative of the *mala fide* intention and of the fact that falsity has been stated in the complaint petition. Learned counsel submitted that the story of the petitioners not returning the money to the opposite party no. 2 on 25.07.2015 and there being no explanation as to what the opposite party no. 2 did with regard to the same for more than two weeks also indicates that the story is totally concocted and incorrect. Learned counsel submitted that normally, as per the procedure, if a loan is taken for a specific purpose which, in the present case, is said to be for buying land, the Bank makes direct payment to the land owner and withdrawal of cash from the account is not permissible by the loanee.

6. Learned A.P.P. submitted that there is a lot of contradictions in the stand taken by the opposite party no. 2 which does not inspire confidence in the allegations made in the complaint.

7. Learned counsel for the opposite party no. 2 took a preliminary objection that the present case under Section 482 of



the Code is not maintainable as the order taking cognizance being a final order, the case had to be filed by way of revision under Section 397 of the Code. For such proposition, learned counsel referred to and relied upon the decision of the Hon'ble Supreme Court in the case of **Mohit v. State of U.P.** reported as **(2013) 7 Supreme Court Cases 789**, the relevant being at paragraphs no. 25, 29 and 32 for the proposition that when there is a specific remedy provided by way of appeal or revision, inherent powers under Section 482 of Cr.P.C. or Section 151 C.P.C. cannot and should not be resorted to.

8. At this juncture, learned counsel for the petitioners submitted that the reliance placed by learned counsel for the opposite party no. 2 on the aforesaid judgment of the Hon'ble Supreme Court in the case of **Mohit** (supra) is no more a correct law. He referred to the decision of the Hon'ble Supreme Court in the case of **Prabhu Chawla vs. State of Rajasthan** reported as **2016 (4) PLJR (SC) 174** in which it has been held that the challenge to order taking cognizance can be assailed under the inherent powers under Section 482 of the Code and further, specifically at paragraph no. 7, the Court has held that the decision in the case of **Mohit** (supra) does not state the law correctly. Learned counsel submitted that the judgment in the case of



Prabhu Chawla (supra) is by a three-judge Bench as compared to the judgment in the case of **Mohit** (supra), which is by a two-judge Bench. Faced with the situation, learned counsel for the opposite party no. 2 submitted that he was not pressing the point of maintainability.

9. Moving further, learned counsel for the opposite party no. 2 submitted that from the passbook, copy of which has been brought on record, it transpires that an amount of Rs. 3,50,000/- was withdrawn on 22.07.2015. Learned counsel submitted that the opposite party no. 2 has been put to a loss because of the conduct of the petitioners as they had taken away huge money and have also got a false case instituted against him through his wife.

10. As the opposite party no. 2 was present in Court, the Court put certain queries to him. The first was as to whether he had taken leave on 13.08.2015 and 14.08.2015 which were working days being Thursday and Friday, he submitted that he was on leave. On a further query as to whether the wife was with him, he stated that she was with him in his house at Sasaram. On a query as to when the wife was living with him on 14.08.2015 how come there could have been threatening of getting a false case of dowry registered, which was so done on 14.08.2015 itself, the opposite party no. 2 could not give any explanation.



11. At this stage, the Court asked the learned counsel for the petitioners as to whether the opposite party no. 2 is also misusing his position as an employee at the Civil Courts, Sasaram, the answer was a categorical 'Yes'. He submitted that in the case filed by the wife there is hardly any progress whereas in the complaint case filed things are moving at a quick pace. It was further submitted that even the case filed by the wife for maintenance on 11.01.2016, i.e., Maintenance Case No. 10 of 2016, there is no progress as not even interim orders have been passed. It was submitted that the opposite party no. 2 is misusing his position in the Civil Courts, Sasaram which has resulted in such a situation.

12. 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. The entire story in the complaint in the background of the facts as discussed hereinabove clearly indicate that the same is only to create a defence to the case filed by the wife of the opposite party no. 2, being Sasaram Town P.S. Case No. 928 of 2015 on 14.08.2015 i.e., 11 days prior to filing of the complaint case by the opposite party no. 2. The Court, in this connection, would refer to the decision of the Hon'ble Supreme Court in the case of **State of Haryana v.**



Bhajan Lal reported as **1992 Supplementary (1) Supreme Court Cases 335** in which at paragraph no. 102 various categories have been indicated where the Court would exercise its 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, thought 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 controverted 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 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 drudge.”

13. In the opinion of the Court, the present case falls under category 7 set out in paragraph no. 102 of the aforesaid



judgment of **Bhajan Lal** (supra). Further, it would be useful to reproduce paragraph no. 7 of the judgment of the Hon'ble Supreme Court in the case of **State of Karnataka v. L. Muniswamy** reported as (1977) 2 Supreme Court Cases 699 which reads 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 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 though 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 salient jurisdiction.”



14. From the discussions made hereinabove, the Court finds that the prosecution is *mala fide*, untenable and solely intended to harass the petitioners.

15. Accordingly, the application is allowed. The entire Complaint Case No. 1143 of 2015 (Tr. No. 736 of 2015) along with the order dated 09.01.2015 by which cognizance has been taken against the petitioners under Sections 504, 506 and 406 of the Indian Penal Code stands quashed.

16. Before parting with the order, the Court would dwell on an equally important aspect for the reason that inherent powers under Section 482 of the Code is also for the purpose of preventing the abuse of the process of the court or otherwise to secure the ends of justice. From the conduct of the opposite party no. 2, it is apparent that he has misused his position being an employee at the Civil Courts, Sasaram.

17. At this stage, learned counsel for the petitioners submitted that for the said purpose, a case has been filed in the High Court praying that all cases pending between the parties be transferred out of Sasaram in which the opposite party no. 2 has been noticed and he has also appeared.

18. In this connection, the Court would only observe that for maintaining the dignity, purity and faith in the system, it is



deemed appropriate to refer the matter to the Standing Committee of the High Court to consider transferring of opposite party no. 2 from the Civil Courts, Sasaram to a judgeship far removed from that place so as to prevent any undue influence exerted by him with regard to the cases pending there.

19. The Registrar General of the Court shall place the matter before the Standing Committee.

20. At this juncture, the opposite party no. 2 and learned counsel appearing for him, prayed that one indulgence be given to him and that he was ready to take his wife and children to his place at Sasaram and keep them with full dignity, honour and security.

21. Learned counsel for the petitioners, on instructions submitted that the wife is ready to go and live with the opposite party no. 2, for which the Court may pass appropriate orders to ensure her and her children's safety.

22. In view of the aforesaid, order with regard to quashing of the case stands. However, the direction with regard to transfer and other action against the opposite party no. 2, is kept in abeyance, for the time being. This has been done on the assurance given by opposite party no. 2 that he will take his wife and two daughters to his place and keep them with full dignity, honour and security and shall take care of all their needs, including medical



expenses and daily expenditure. The wife shall be free to talk to and meet and entertain her relatives without any objection from the opposite party no. 2 and also go to her parental home. The opposite party no. 2 shall go to the house of his wife and from there bring her, along with the two children to his house at Sasaram and keep them with full dignity, honour and security and they shall not be compelled to go to the native village of the opposite party no. 2. The same be done within one week from today. Further, the opposite party no. 2 shall be personally liable if any untoward incident happens either to his wife or the two children or if they are maltreated in any way.

23. The matter be listed on 10th April, 2019 under the heading 'For Orders'.

24. In the meantime, if the opposite party no. 2 fails to comply with the assurance given before the Court, it shall be open for the wife of the opposite party no. 2 to file a petition before the Court for passing any order which may be deemed appropriate.

25. The Court would record that the order with regard to the wife and children of opposite party no. 2 being sent to the house of opposite party no. 2 has been passed at the behest of the opposite party no. 2.



26. The Court would further observe that if on the next day, matters appear to be settled, the Court may facilitate in bringing to an end all litigation between the parties.

(Ahsanuddin Amanullah, J)

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