

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.23727 of 2015

Arising Out of PS. Case No.-3350 Year-2013 Thana- PATNA COMPLAINT CASE District-
Patna

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1. Dr. Ajay Kumar S/o Late Dr. Braj Kishore Prasad
 2. Dr. Varsha w/o Dr. Ajay Kumar Both Resident of F-59, P.C. Colony, Malahi Pakari, P.S. Kankar Bagh, District Patna.

... .. Petitioner/s

Versus

1. The State of Bihar
2. Smt. Prachi W/o Dr. Abhay Kumar, D/o Late Suman Kumar Verma C/o Sri A.K. Verma Patna Flat No. 206, Ma Bhagwati Complex, Boring Road, Chauraha, P.S. S.K. Puri, District Patna.

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr.Sunita Kumari
For the Opposite Party/s : Mr.Bharat Bhushanapp

CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH
ORAL JUDGMENT

Date : 02-12-2019

The present petition has been filed for quashing the order dated 1.7.2014 passed by the learned Judicial Magistrate, 1st Class, Patna in connection with Complaint Case No. 3350 (c) of 2013 whereby cognizance has been taken under Section 498A of the Indian Penal Code against the accused persons including the petitioners herein.

2. The brief facts of the case are that a complaint dated 24.9.2013 was filed before the learned Court of Chief Judicial Magistrate, Patna by the complainant, namely, Smt. Prachi, wife of Dr. Abhay Kumar, inter alia, alleging therein that the



complainant was married with Dr. Abhay Kumar (accused no. 1) as per the Hindu Rites and Customs on 24.6.2011 at Muzaffarpur, whereafter the husband of the complainant had taken a sum of Rs. 5,00,000/- from the father of the complainant on the pretext of constructing a clinic and subsequently, it appears that a sum of Rs. 1,00,000/- was transferred in the joint account of the husband of the complainant and his mother. It is further alleged in the complaint that subsequently also, transfer of various sums of money had taken place and the father of the complainant had also given various articles to the husband of the petitioner and his family members by way of dowry. Subsequently, after marriage, the husband of the complainant, his mother, his elder brother and sister-in-law started demanding Rs. 3,00,000/- in cash and a scorpio vehicle by way of dowry and upon non-fulfillment of the said demand, they used to beat and abuse the complainant i.e. the victim lady. It appears that the complainant was subsequently blessed with a baby girl out of the wedlock whereupon the torture at the hands of the accused persons increased and since the husband of the complainant was staying at Bangalore, the complainant also started pressurizing her husband to take her to Bangalore, whereupon the husband of the complainant had demanded for a



sum of Rs. 7,00,000/- from the complainant and her father for the purposes of purchasing a flat at Bangalore. It is also the allegation of the complainant that the husband of the complainant had developed illicit relationship with another girl. Lastly, it is submitted in the complaint petition that harassed with the torture at the hands of the accused persons, the petitioner had come to Patna in the month of October, 2012, and then she and her family members had a talk with the husband of the complainant and a meeting was held at the in-laws' house of the complainant on 17.9.2013, however, after few days, the complainant was thrown out of the in-laws' house, after being tortured by the accused persons.

3. The learned counsel for the petitioners has submitted that the petitioner no. 1 is the elder brother of the husband of the opposite party 2 and the petitioner no. 2 is the wife of the petitioner no. 1. It is also submitted that the petitioners herein have been married long time back, are doctors and are prosecuting their profession at different place and they have been unnecessarily made accused in the present case. It is further argued that without looking into the aforesaid aspects, the learned trial court has taken cognizance under Section 498A of the Indian Penal Code against the petitioners as well. It has



been further submitted that the learned court below has taken cognizance under Section 498A of the Indian Penal Code against the petitioners in a mechanical manner, hence, the same is required to be set aside.

4. The learned counsel for the petitioners has further referred to a judgment rendered by the Hon'ble Apex Court in the case of ***Preeti Gupta vs. State of Jharkhand***, reported in ***2010(7) SCC 667***, paragraph nos. 21, 23, 24, 25, 26, 29, 32, 34, 35 and 39 are reproduced hereinbelow:-

21. This Court in State of Karnataka v. L. Muniswamy⁴ observed that the wholesome power under Section 482 CrPC entitles the High Court to quash a proceeding when it comes to the conclusion that allowing the proceeding to continue would be an abuse of process of court or that the ends of justice require that the proceeding ought to be quashed. The High Courts have been invested with inherent powers, both in civil and criminal matters, to achieve a salutary public purpose. A court proceeding ought not to be permitted to degenerate into a weapon of harassment or persecution. In this case, the Court observed that ends of justice are higher than the ends of mere law though justice must be administered according to laws made by the legislature. This case has been followed in a large number of subsequent cases of this Court and other



courts.

23. *This Court in Madhavrao Jiwarelrao Scindia v. Sambhajirao Chandrojlrao Angre⁶ observed in SCC para 7 as under: (SCC p. 695)*

“7. The legal position is well settled that when a prosecution at the initial stage is asked to be quashed, the test to be applied by the court is as to whether the uncontroverted allegations as made prima facie establish the offence. It is also for the court to take into consideration any special features which appear in a particular case to consider whether it is expedient and in the interest of justice to permit a prosecution to continue. This is so on the basis that the court cannot be utilised for any oblique purpose and where in the opinion of the court chances of an ultimate conviction are bleak and, therefore, no useful purpose is likely to be served by allowing a criminal prosecution to continue, the court may while taking into consideration the special facts of a case also quash the proceeding even though it may be at a preliminary stage.”

24. *In State of Haryana v. Bhajan Lal⁷ this Court in the backdrop of interpretation of various relevant provisions of the Code of Criminal Procedure (for short “CrPC”) 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 of the*



Constitution of India or the inherent powers under Section 482 CrPC gave the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of process of court or otherwise to secure the ends of justice. Thus, this Court made it clear that 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 to myriad kinds of cases wherein such power should be exercised: (SCC pp. 378-79, para 102)

“(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 Act concerned (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 Act concerned, 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.”*

25. *In G. Sagar Suri v. State of U.P.⁸ this Court observed that it is the duty and obligation of the criminal court to exercise a great deal of caution in issuing the process particularly when matters are*



essentially of civil nature.

26. *This Court in Zandu Pharmaceutical Works Ltd. v. Mohd. Sharaful Haque⁹ observed thus: (SCC p. 128, para 8)*

“8. ... It would be an abuse of process of court to allow any action which would result in injustice and prevent promotion of justice. In exercise of the powers, court would be justified to quash any proceeding if it finds that initiation/continuance of it amounts to abuse of the process of court or quashing of these proceedings would otherwise serve the ends of justice. When no offence is disclosed by the complaint, the court may examine the question of fact. When a complaint is sought to be quashed, it is permissible to look into the materials to assess what the complainant has alleged and whether any offence is made out even if the allegations are accepted in toto.”

29. *Admittedly, Appellant 1 is a permanent resident of Navasari, Surat, Gujarat and has been living with her husband for more than seven years. Similarly, Appellant 2 is a permanent resident of Goregaon, Maharashtra. They have never visited the place where the alleged incident had taken place. They had never lived with Respondent 2 and her husband. Their implication  676 in the complaint is meant to harass and humiliate the husband's relatives. This seems to be the only basis to file this complaint against the appellants.*



Permitting the complainant to pursue this complaint would be an abuse of the process of law.

32. It is a matter of common experience that most of these complaints under Section 498-A IPC are filed in the heat of the moment over trivial issues without proper deliberations. We come across a large number of such complaints which are not even bona fide and are filed with oblique motive. At the same time, rapid increase in the number of genuine cases of dowry harassment is also a matter of serious concern.

34. Unfortunately, at the time of filing of the complaint the implications and consequences are not properly visualised by the complainant that such complaint can lead to insurmountable harassment, agony and pain to the complainant, accused and his close relations.

 *35. The ultimate object of justice is to find out the truth and punish the guilty and protect the innocent. To find out the truth is a Herculean task in majority of these complaints. The tendency of implicating the husband and all his immediate relations is also not uncommon. At times, even after the conclusion of the criminal trial, it is difficult to ascertain the real truth. The courts have to be extremely careful and cautious in dealing with these complaints and must take pragmatic realities into consideration while dealing with matrimonial cases. The allegations of harassment of husband's*



close relations who had been living in different cities and never visited or rarely visited the place where the complainant resided would have an entirely different complexion. The allegations of the complainant are required to be scrutinised with great care and circumspection.

39. When the facts and circumstances of the case are considered in the background of legal principles set out in the preceding paragraphs, then it would be unfair to compel the appellants to undergo the rigmarole of a criminal trial. In the interest of justice, we deem it appropriate to quash the complaint against the appellants. As a result, the impugned judgment of the High Court is set aside. Consequently, this appeal is allowed.”

5. I have heard the learned counsel for the petitioners. Despite valid service of notice and appearance of the opposite party no. 2 through a duly appointed advocate by filing vakalatnama in the present case, nobody has appeared on behalf of the opposite party no. 2 to advance any arguments despite the matter being passed over on the earlier occasion. Nonetheless, this Court is of the view that the impugned order dated 1.7.2014 passed by the learned Judicial Magistrate, 1st Class, Patna whereby and whereunder cognizance has been taken under Section 498A of the Indian Penal Code, has been passed mechanically without any application of mind, as also without



considering the prevalent law on the subject-matter. It is further apparent from the records of the case that the petitioners herein are the elder brother and sister-in-law of the husband of the complainant, living at a separate and a different place, having nothing to do with the affairs of the complainant / her husband, which is apparent from the complaint petition itself inasmuch as no specific allegation of any assault, abuse or demand of dowry has been made qua the petitioners herein nor it has been explained as to how, where and when the petitioners had tortured the complainant or demanded dowry from her and on the contrary, I find that only a general and omnibus allegation has been levelled against the petitioners by the complainant with oblique motives and with a view to increase the bargaining power.

6. Considering the facts and circumstances of the case, as also the law laid down by the Hon'ble Apex Court in the case of ***Preeti Gupta*** (supra), this Court finds that it would be unfair to compel the petitioners herein to undergo the rigour of a criminal trial and even otherwise, I find that the order dated 1.7.2014, by which cognizance has been taken by the learned court below, as far as the petitioners are concerned, is perverse and passed in a mechanical manner without any application of mind, hence, is



required to be quashed. In any view of the matter, a bare perusal of the complaint petition would show that the allegations levelled therein do not prima facie constitute any offence and make out a case as against the petitioners herein.

7. Having regard to the facts and circumstances of the case and for the reasons mentioned hereinabove, the present petition is allowed and the order dated 1.7.2014 passed by the learned Judicial Magistrate, 1st Class, Patna in Complaint Case No. 3350(c) of 2013, as regards the petitioners herein, is quashed.

(Mohit Kumar Shah, J)

ajay gupta/-

AFR/NAFR	AFR
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