

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.2888 of 2017

Arising Out of PS. Case No.-113 Year-2015 Thana- MAHILA P.S. District- Bhojpur

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1. Chandeshwari Singh @ Channeswari Singh @ Dhaneshwari Singh son of late Bishwanath Singh.
 2. Vinod Singh son of Lallan Singh.
 3. Vikash Kumar Singh son of Chandeshwari Singh.
 4. Ritesh Singh son of Chandeshwari Singh.
 5. Mukesh Kumar Singh @ Mukesh Singh @ Munna Singh.
 6. Akhilesh Singh son of Lallan Singh.
 7. Shailesh Singh son of Lallan Singh.
 8. Pooja Devi @ Pooja Singh wife of Ritesh Singh.
 9. Sangita Singh @ Sangeeta Devi, D/o Chandeshwari Singh.
- All resident of village-Balihar, P.S.-Simri, District-Buxar.

... .. Petitioner/s

Versus

1. The State of Bihar.
2. Anita Devi wife of Mukesh Singh Daughter of Ramayan Singh, resident of village-Chanawath, P.S.-Bihiya, District-Bhojpur (Ara).

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr.Bachan Jee Ojha, Adv.
For the Opposite Party/s : Mr.Bhanu Pratap Singh,APP

CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI
ORAL ORDER

6 12-04-2019 At an earlier occasion it was disclosed at the end of the O.P. No.2 that while granting bail to the husband/petitioner vide order dated 26.11.2015 in connection with Cr. Misc. No.53476/2015 he was directed to pay Rs.1500/- per month as has been conceded. Furthermore, it was also disclosed that a sum of Rs.31,500/- remains due till March, 2019. Learned counsel for the petitioners has submitted that husband (petitioner no.5) has come and is ready to clear the dues. Learned counsel for the O.P. No.2 has said that O.P. No.2 is also



present. O.P. No.2 has received Rs.31,500/- in court having been duly identified by learned counsel Shri Rabindra Kumar Sinha.

Heard learned counsel for the petitioners as well as learned APP.

On the ground of adultery, it has been submitted that a Complaint Case No.1372(c) of 2014 has been filed at the end of the husband (petitioner no.5) and after coming to know about the same, instant prosecution has been initiated at the end of the wife and in the aforesaid background, quashing of the order dated 05.08.2016 passed in Bhojpur (Mahila) P.S. Case No.113/2015 summoning the petitioners to face trial for an offence punishable under Sections 323, 341, 498A, 406/34 and 3/4 of D.P. Act has been prayed for.

It has further been submitted at the end of the petitioners that the complainant, Anita Devi developed extra marital relationship with Anand Kumar Singh, a co-villager and which the father-in-law, namely, Chandeshwari Singh (petitioner no.1) had seen both of them in compromising position in the evening of 05.10.2014 whereupon, was solded and in the aforesaid background she slipped on 06.10.2014 (Annexure-2) along with all her belongings. For that a complaint petition has been filed. It has also been submitted that an information has



also been given to the police on 12.10.2014 to the aforesaid effect. Also submitted that a petition for divorce has also been filed (But not annexed with the petition) and is pending. It has also been submitted that the present litigation is also in chain thereof which has purposely been filed at the end of the complainant in retaliation, implicating whole family members including the Pattidars. Others activities is indicative of the fact that it happens to be a malicious prosecution. Apart from this, it has also been submitted that there happens to be omnibus allegation attributed in the complaint petition whereupon, the case of other petitioners except the husband, as per settled principle of law laid down by the Hon'ble Apex Court, should be quashed along with order of cognizance. So far husband is concerned, in the background of factual position as divulged, also attracts same treatment.

On the other hand, the learned APP as well as learned counsel for the O.P. No.2 has submitted that the husband has invented novel method when he became apprehensive that on account of torturous treatment having meted out over the wife, the appropriate legal action is going to be taken by way of filing of complaint petition along with information before the police. Apart from this, it has also been submitted that the allegation so



attributed at the end of the husband is yet to be adjudicated upon by a competent court and further, not only it will be a premature effort rather, it has been conclusively held that casting an allegation over character of wife if, not substantiated, is one of the ingredient of mental cruelty. In the aforesaid background the instant prosecution is maintainable. Furthermore, it has also been submitted that there happens to be specific disclosure with regard to the persons who came at the Maika of the O.P. No.2 on 15.02.2015 and shown their muscle power that being so, the specific allegation having attributed against them did not justify the submission having made on behalf of petitioners.

It is needless to say that the disputed question should not be taken up for consideration while considering the prayer under Section 482 of the Cr.P.C. Whether the allegation having attributed at the end of the petitioner, in case is being taken into consideration for the present will tantamount to prejudging the event apart from the fact that same is sub-judice before a competent court. Furthermore, in **Rishipal Singh v. State of U.P. & other** reported in **AIR 2014 SC 2567**, it has been held:

“12. This Court in plethora of judgments has laid down the guidelines with regard to exercise of jurisdiction by the Courts under [Section 482](#) Cr.P.C. In *State of Haryana v. Bhajan Lal* 1992 Supp(1) SCC 335, this Court has listed the categories of cases when the power under [Section 482](#) can be exercised by the Court. These principles or the guidelines were reiterated by this Court in (1)



[Central Bureau of Investigation v. Duncans Agro Industries Ltd.](#) 1996 (5) SCC 592; (2) [Rajesh Bajaj v. State NCT of Delhi](#) 1999 (3) SCC 259 and; (3) [Zandu Pharmaceuticals Works Ltd. v. Mohd. Sharaful Haque & Anr](#) (2005) 1 SCC 122. This Court in Zandu Pharmaceuticals Ltd., observed that:

“The power under [Section 482](#) of the Code should be used sparingly and with to prevent abuse of process of Court, but not to stifle legitimate prosecution. There can be no two opinions on this, but if it appears to the trained judicial mind that continuation of a prosecution would lead to abuse of process of Court, the power under [Section 482](#) of the Code must be exercised and proceedings must be quashed”. Also see [Om Prakash and Ors. V. State of Jharkhand](#) 3012 (12) SCC 72.

What emerges from the above judgments is that when a prosecution at the initial stage is asked to be quashed, the tests to be applied by the Court is as to whether the uncontroverted allegations as made in the complaint prima facie establish the case. The Courts have to see whether the continuation of the complaint amounts to abuse of process of law and whether continuation of the criminal proceeding results in miscarriage of justice or when the Court comes to a conclusion that quashing these proceedings would otherwise serve the ends of justice, then the Court can exercise the power under [Section 482](#) Cr.P.C. While exercising the power under the provision, the Courts have to only look at the uncontroverted allegation in the complaint whether prima facie discloses an offence or not, but it should not convert itself to that of a trial Court and dwell into the disputed questions of fact.

The court has occasion to see whenever there happens to be prosecution under Section 498A of the IPC, not only the husband and the close family members rather agnates are also being involved as an accused in revengeful manner and on account thereof, perceiving the aforesaid tendency, it has been held that whenever there happens to be omnibus allegation against them, then in that circumstance, it cannot be better to



quash the proceeding. In **Rakhi Mishra vs. State of Bihar &**

Ors. reported in (2017) 16 SCC 772, it has been held:-

4. We have heard learned counsel appearing for the parties. We are of the considered opinion that the High Court erred in allowing the application filed by Respondent Nos.2, 4, 5, 6, 7, 8, 9 and 10 and quashing the criminal proceedings against them. A perusal of the FIR would clearly show that the Appellant alleged cruelty against Respondent Nos.2, 4, 5, 6, 7, 8, 9 and 10. This Court in [Sonu Gupta v. Deepak Gupta and Ors.](#) (2015) 3 SCC 424, 426 held as follows:

“8. ...At the stage of cognizance and summoning the Magistrate is required to apply his judicial mind only with a view to take cognizance of the offence to find out whether a prima facie case is made out for summoning the accused persons. At this stage, the Magistrate is not required to consider the defence version or materials or arguments nor he is required to evaluate the merits of the materials or evidence of the complainant, because the Magistrate must not undertake the exercise to find out at this stage whether the materials would lead to conviction or not.”

5. The order passed by the Trial Court taking cognizance against R-2 and R-4 to R-9 is in conformity with the law laid down in the above judgment. It is settled law that the power under [Section 482](#) Cr. P.C. is exercised by the High Court only in exceptional circumstances only when a prima facie case is not made out against the accused. The test applied by this Court for interference at the initial stage of a prosecution is whether the uncontroverted allegations prima facie establish a case.”

Under the garb of aforesaid principle when the complaint has been gone through, it has been found that there happens to be specific disclosure that on 15.02.2015 at about 2.00 PM husband Mukesh Singh, Bhaisur Ritesh Singh, Debar Vikash Singh and cousin father-in-law Akhilesh Singh, Shailesh Singh, Vinod Singh came at the Maika of the complainant where



they shown their muscle power, abused and further threatened to kill in case, any kind of activity is taken up and in likewise manner the ornaments which she retains is not returned to them though with regard to earlier occasion, there happens to be omnibus allegation. That being so, the instant petition is found non-maintainable relating to the petitioners Mukesh Kumar Singh @ Mukesh Singh @ Munna Singh, Ritesh Singh, Vikash Kumar Singh, Akhilesh Singh, Shailesh Singh, Vinod Singh and is accordingly rejected. So far petitioner no.1, Chandeshwari Singh @ Channeswari Singh @ Dhaneshwari Singh, Pooja Devi @ Pooja Singh and Sangita Singh @ Sangeeta Devi are concerned, the order impugned is set aside to their extent. Consequent thereupon, instant petition is allowed in terms thereof.

(Aditya Kumar Trivedi, J.)

Prakash Narayan

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