

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**CRIMINAL MISCELLANEOUS No.28 of 2018**

Arising Out of PS. Case No.-1363 Year-2016 Thana- NALANDA COMPLAINT CASE  
District- Nalanda

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1. Aditya Tiwari @ Adi @ Aditya Kumar, Son of Ravi Kumar Tiwari
  2. Pragya Tiwari daughter of Late Pawan Kumar Tiwari  
Both residents of Mohalla - Gardhpar, Near Choti Mandir Biharsharif, P.S.  
Biharsharif, District - Biharsharif Nalanda.
  3. Arun Kumar Tripathi Son of Late Devnandan Tripathi
  4. Abhishek Tirpathi @ Golu @ Abhisek Tirpathi Son of Arun Kumar Tripathi  
Both residents of Puraniganj, P.S. - Kasim Bazar, District - Munger.

... .. Petitioner/s

Versus

1. State Of Bihar
2. Mritunjay Kumar Shashi Son of Nawal Kishore Prasad resident of  
Gosaimath, P.S. - Barh, District - Patna, at present resident of Mohalla -  
Kamruddinganj, P.S. - Laheri, District - Biharsharif Nalanda.

... .. Opposite Party/s

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**Appearance :**

For the Petitioner/s : Mr. S. K. Verma, Advocate  
Mr. D. P. Verma, Advocate  
For the Opposite Party/s : Mr. Jharkhandi Upadhyay

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**CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR**

ORAL ORDER

6      13-11-2019                      Heard the learned counsel for the petitioner and  
the State.

The petitioners have approached this Court for



quashing of the order dated 03.08.2017 passed by the learned Additional Chief Judicial Magistrate, 1<sup>st</sup>, Biharsharif (Nalanda) in connection with Complaint Case No. 1363C of 2016, whereby cognizance has been taken under Sections 323, 504 and 34 of the Indian Penal Code.

From the records, it appears that Opposite Party No. 2 / the complainant was married to one Komal, which marriage did not succeed and a case under Section 498-A of the Indian Penal Code was lodged by the wife of Opposite Party No. 2 against him and other members of his family.

As a retaliation to the aforesaid prosecution of Opposite Party No. 2, it has been urged that the present complaint was lodged in which the petitioners have been made accused. The petitioner nos. 1 and 4 are cousins of the wife of Opposite Party No. 2, whereas petitioner no. 2 is the own sister of the wife of Opposite Party No. 2. The petitioner no. 3 is the maternal uncle of the wife of Opposite Party No. 2.

The court below, while going through the averments in the complaint, found that the allegation of theft



was not substantiated but took cognizance under Sections 323, 504 and 34 of the Indian Penal Code.

It has been urged that the court below did not take into account the fact that 3 out of 4 petitioners are distantly related to the wife of Opposite Party No. 2, whereas one of the petitioners (petitioner no. 2) is the own sister of the wife of Opposite Party No. 2.

There *prima facie* appears to be good reason for falsely implicating the petitioners in the aforesaid complaint. The falsity of the accusation is further apparent from the fact that when notice was issued to Opposite Party No. 2, he chose not to appear. Many opportunities were given to Opposite Party No. 2 to appear and contest this case but today also nobody has appeared on behalf of Opposite Party No. 2.

Regard being had to the background facts, namely the failed marriage of Opposite Party No. 2 with his wife and the petitioners being related to the wife of Opposite Party No. 2, this Court is of the view that the accusation is merely for the purpose of wreaking vengeance against the family of



wife of Opposite Party No. 2 which ought not to be permitted  
for the ends of justice.

For the reasons aforenoted, the order of  
cognizance and the consequent prosecution of the petitioners  
in the case is quashed.

The application stands allowed.

**(Ashutosh Kumar, J)**

skm/-

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