

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.87345 of 2019

Arising Out of PS. Case No.-151 Year-2018 Thana- PURNIA COMPLAINT CASE District-
Purnia

SHYAMA KUMARI W/o Rajesh Prasad Darwe Resident of Shastri Nagar,
Gulabbage Moti Road, P.S.- Purnea Sadar, District- Purnea

... .. Petitioner

Versus

1. The State of Bihar
2. Juli Priya W/o Charan Rai Resident of Barsoni, Behind Bajrang Bali, P.S.-
Dagarua, District- Purnea
3. Anita Devi W/o Late Pawan Rai Resident of Barsoni, Behind Bajrang Bali,
P.S.- Dagarua, District- Purnea
4. Suman Rai S/o Late Pawan Rai Resident of Barsoni, Behind Bajrang Bali,
P.S.- Dagarua, District- Purnea
5. Munni W/o Rajesh Mandal Resident of Barsoni, Behind Bajrang Bali, P.S.-
Dagarua, District- Purnea
6. Rajesh Mandal S/o Mohan Mandal Resident of Gayatri Mandil, Gulabbagh,
P.S.- Purnea Sadar, District- Purnea

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr.Sanjay Sinha, Adv.
For the Opposite Party/s : Mr.Nagendra Prasad, APP

CORAM: HONOURABLE MR. JUSTICE MADHURESH PRASAD
ORAL JUDGMENT

Date : 09-01-2020

Heard learned counsel for petitioner and learned counsel
for the State.

This application under Section 482 of the Code of
Criminal Procedure has been filed for quashing of the order
dated 07.11.2019 passed by the learned Sessions Judge, Purnea,
dismissing the Cr. Rev. no. 109 of 2019. The revision was
preferred against the order dated 25.06.2019 passed by the
learned Judicial Magistrate, First Class, Purnea dismissing the



petitioner's complaint in exercise of jurisdiction under Section 203 of the Code of Criminal Procedure (*for brevity 'the code'*).

The petitioner had filed a complaint petition alleging that her husband, namely, Rajesh Prasad Darwe has illegally solemnized marriage with one Juli Priya. The allegation is that Juli Priya is trying to grab the property of the complainant's legally wedded husband. In an intoxicated condition, the husband of the complainant was habitually assaulting the complainant. At 9 P. M. on 29.01.2018, the accused persons, namely, Juli Priya, Anita Devi, Suman Rai, Munni and Rajesh Mandal came to the house of the complainant and brutally assaulted her. The complainant, thereafter, goes on to elaborate specific allegations of snatching of gold chain against accused, namely Munni, Snatching of Rs. 50,000/- against accused Rajesh Mandal. It is also alleged that accused Suman Rai tied *Gamchha* around the neck of the complainant. Anita Devi is alleged to have been exhorting Juli Priya to kill the complainant and grab all her belongings. It is, thereafter, alleged that the two sons of the complainant returned homes and the accused persons fled away. The complainant, thereafter, alleges that she also intimated the occurrence to her husband, namely, Rajesh Prasad Darwe.



The complainant has lodged the complaint petition vide Complaint Case No. 151 of 2018 alleging offences under Sections 323,506,452,494, 307 and 380 of the Indian Penal Code. The Chief Judicial Magistrate, Purnea, transferred the case to the Judicial Magistrate, First Class, for enquiry and disposal. The complainant/petitioner was examined on solemn affirmation on 26.03.2018. The matter was fixed for enquiry of the witness. The complainant produced one witness, namely, Sanjit Sharma. The witness, as per his deposition, resides 5 km away from the house of the complainant. In response to the query of the Court, he has explicitly stated that he was not present at the time of the alleged occurrence. He has stated that he was told about the occurrence by Shyama Devi two or three days after the occurrence. Even as per deposition of witness, he was not an eye- witness to the occurrence. He has stated that he maintained social ties with the complainant like brother and sister. It is, in these circumstances, that the Judicial Magistrate was examining the complaint filed by the petitioner/complainant in exercise of jurisdiction under Section 202 of the Code.

It is worth noting here that complainant has not produced her husband or her two sons, who as per the complaint petition, had arrived at her home, when the assault and snatching was



being perpetrated by the accused persons. There is also no medical report so as to corroborate the allegations of brutal assault. Complaint in respect of the occurrence alleged to have taken place on 29.01.2018 has been filed on 01.02.2018 i.e. three days later. The Judicial Magistrate, exercising his jurisdiction under Section 203 of the Code, dismissed the complaint vide order dated 25.06.2019. The petitioner/complainant thereafter preferred a Revision against the order of the Judicial Magistrate dated 25.06.2019. The Court of Sessions Judge, Purnea, by order dated 07.11.2019, has dismissed the Revision application filed by the petitioner/complainant against the order dated 25.06.2019 passed by the Judicial Magistrate 1st Class. The scope of jurisdiction under Sections 202 and 203 of the Code has fallen for consideration many a times before the Hon'ble Apex Court.

The law in this regard, by now, is well- settled. All the Courts have to see is whether or not there is ***“sufficient ground for proceeding”*** against the accused persons. In the instant case, on consideration of the averments made in the complaint with that of the complainant's examination on solemn affirmation and that of the witnesses in the enquiry the Court did not find sufficient ground for proceeding against the accused persons.



The sole witness adduced on behalf of the complainant has clearly admitted that he was not present at the place of occurrence. He has clearly stated that he was told the prosecution case by the complainant two or three days after it allegedly occurred. The two sons of the complainant, who are said to have arrived at the time of alleged occurrence, have surprisingly not been adduced as witness in support of the complainant. One of the allegations is that complainant's husband has illegally solemnized marriage with accused Juli Priya. The complainant's husband, namely, Rajesh Prasad Darwe, however, has not been made an accused. The narration of violation perpetrated by the every individual accused persons is with shocking precision. No injury report in support of such brutal assault, however, has been produced. No paper whatsoever in support of the alleged illegal marriage solemnized by the complainant's husband has been produced. The statement of the complainant on solemn affirmation also states regarding mere apprehension that accused Juli Priya, in connivance with husband of the complainant, are threatening to grab the property of the complainant and her husband. The circumstances, arising out of so many facts before the Judicial Magistrate has led him to conclude that sufficient grounds for proceeding against the



accused persons has not been made out. The Magistrate has clearly recorded that the facts are such that it is apparent that no offence is made out. At best, there is a subsisting property dispute between the complainant and accused Juli Priya. The Court of Sessions Judge, Purnea, has also examined the order and after considering the relevant law regarding taking of cognizance has found no reason to interfere with the order dated 25.06.2019 dismissing the complaint.

The sufficiency or insufficiency of the material has been adequately examined by the learned Judicial Magistrate 1st Class. Exercise of such jurisdiction has been subjected to Revision before the Court of Sessions Judge. Both the Courts have found that there is insufficient material/grounds for proceeding against the accused. The case of **Chandra Deo Singh vs. Prokash Chandra Bose & Anr.** reported in **AIR 1963 SC 1430** is one of the earlier leading cases relevant to the instant case. Relying upon para-13 of the said case decided by the Hon'ble Apex Court this Court would observe that issue of process has rightly been refused by the Magistrate as the evidence led by the complainant is self contradictory or intrinsically untrustworthy.

In the case of **Ranjit Singh vs. State of Pepsu** now



Punjab reported in **AIR 1959 SC 843**, the Apex Court has observed with reference to the scope of enquiry under Section 202 of the Code that the accused has no right to intervene and that it is the duty of the Magistrate while making an enquiry to elicit facts not merely with a view to protect the interest of the absent accused persons but also with a view to bring to book a person or persons against whom grave allegations are made. The more recent decisions in the case of **Mahendra Singh Dhoni v. Yerraguntla Shyamsundar and Anr.**, in Transfer petition (Criminal) No. 23 of 2016 is also relevant to the instant case. The Apex Court in the said case has also observed as under:-

“We would like to sound a word of caution that the Magistrates who have been conferred with the power of taking cognizance and issuing summons are required to carefully scrutinize whether the allegations made in the complaint proceeding meet the basic ingredients of the offence; whether the concept of territorial jurisdiction is satisfied; and further whether the accused is really required to be summoned. This has to be treated as the primary judicial responsibility of the Court issuing process.”

The Apex Court in the case of **M/S Pepsi Foods Ltd & Anr. Vs. Special Judicial Magistrate & Ors.** reported in **AIR 1998 SC 128** has observed that :

“Summoning of an accused in a criminal case is a serious matter. Criminal law cannot be set into motion as a matter of course. It is not that the complainant has to bring only two witnesses to support his allegations in the complaint to have the



criminal law set into motion. The order of Magistrate summoning the accused must reflect that he has applied his mind to the facts of the case and the law applicable thereto. He has to examine the nature of allegations made in the complaint and the evidence both oral and documentary in support thereof and would that be sufficient for the complainant to succeed in bringing charge home to the accused. It is not that the Magistrate is a silent spectator at the time of recording of preliminary evidence before summoning of the accused. Magistrate has to carefully scrutinize the evidence brought on record and may even himself put questions to the complainant and his witnesses to elicit answers to find out the truthfulness of the allegations or otherwise and then examine if any offence is prima facie committed by all or any of the accused.”

This Court also has to appreciate such a conclusion in the background of the law in this regard. The allegation made in the complaint are apparently contradictory and intrinsically untrustworthy. The said conclusion, in the opinion of this Court, thus, appears to be correct.

Viewed in the background of the legal position emerging from the decisions of the Apex Court taken note of hereinabove, this Court finds no reason to exercise jurisdiction under Section 482 of the Code for quashing the order dated 07.11.2019 passed by the Sessions Judge, Purnea in revision, or the order dated 25.06. 2019 passed by the learned Judicial Magistrate 1st Class, Purnea dismissing the complaint petition in complaint case no.



151 of 2018.

The exercise of inherent jurisdiction under Section 482 of the Code is to be resorted to only where there appears to be a clear and manifest failure of justice. It is only, under such circumstances, that this Court should exercise its jurisdiction under Section 482 of the Code for quashing an order of the criminal Courts. The Magistrate and the Revisional Court have both rightly exercised the jurisdiction vested in them. Such exercise of power, having regard to the relevant facts and circumstances of the case, which, *prima facie*, is within four corners of the scope of such power defined by the Apex Court in the various judgment taken note of hereinabove. The orders requires no interference.

The instant application filed under Section 482 of the Code is, thus, devoid of merit and the same is dismissed.

(Madhuresh Prasad, J)

shyambihari/-

AFR/NAFR	AFR
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