

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.18205 of 2016

Arising Out of PS. Case No.-736 Year-2014 Thana- GAYA COMPLAINT CASE District-
Gaya

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1. Nandu Singh @ Nand Kumar Singh, son of Shambhu Singh @ Shambhu Sharan Singh.
 2. Ravi Singh @ Ravi Prakash Badal, sone of Shambhu Singh @ Shambhu Sharan Singh.
 3. Raja Singh, son of Nandu Singh @ Nand Kumar Singh.
 4. Shambhu Singh @ Shambhu Sharan Singh, son of late Ganesh Singh.
 5. Manorma Devi, Wife of Nandu Singh @ Nand Kumar Singh.
 6. Muni Devi, wife of Late Kamlesh Kumar.

All resident of village Munshi Tola, Sherghati, P.S. Sherghati, District-
Gaya.

7. Akhilesh Singh @ Akhhilesh Kumar Singh, son of Ram Charita Singh.
8. Chandra Kant Devi @ Chandra Kanta Kumari, wife of Akhilesh Singh @ Akhilesh Kumar Singh.

Both resident of village Musiya, P.S. Bodh Gaya, Cherki, District-Gaya.

... .. Petitioner/s

Versus

1. The State Of Bihar.
2. Rina Devi wife of Ram Charitra Singh, resident of village Musiya, P.S. Bodh Gaya, District-Gaya.

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mrs. Archana Shahi, Advocate
		Mr. Alok Kumar @ Alok Kr Shahi, Advocate
For the Opposite Party/s	:	Mr. Ajit Kumar, Advocate

CORAM: HONOURABLE MR. JUSTICE PURNENDU SINGH
ORAL JUDGMENT

Date : 20-09-2023

Heard Mrs. Archana Shahi, learned counsel
appearing on behalf of the petitioners and Mr. Ajit Kumar,
learned counsel appearing on behalf of the State.

2. The present quashing application has been
filed under Sections 482 of the Code of Criminal Procedure
against the order dated 27.11.2015 by which learned
Judicial Magistrate 1st Class, Gaya has taken cognizance



against the petitioners under Sections 147, 323, 341, 380 and 504 of the Indian Penal Code in Complaint Case No. 736 of 2014.

3. Learned counsel appearing on behalf of the petitioners submits that earlier to the present complaint, the petitioner no.8, who is the daughter-in-law of the complainant (O.P. No.2) namely, Rina Devi has lodged a complaint case being Complaint Case No. 416 of 2014 (Annexure-2) against her in-laws including her husband under Section 498(A) of the Indian Penal Code. He further submits that the petitioner nos. 7 and 8 who are husband and wife are now living together and have jointly filed the present quashing application along with other family members, who are petitioner nos. 1 to 6. It is further submitted that allegation as made in the complaint is not sustainable and the order taking cognizance dated 27.11.2015 is against the law laid down by the Apex Court in the case of *Priyanka Srivastava v. State of U.P.* reported in *(2015) 6 SCC 287*. Learned counsel has emphasized the observation of the Apex Court that remedy available under Clause 3 of Section 156 of the Code of Criminal Procedure



is not of routine nature. The exercise of power thereunder requires application of judicial mind. The Magistrate exercising such power must remain vigilant with regard to nature of allegation made in the F.I.R./Complaint and not to issue direction without proper application of mind. Learned counsel further submits that in the said judgment, the Apex Court has cautioned the Magistrate that the Magistrate is required to first verify the truth and veracity of the allegation made having regard to nature thereof. In these background, learned counsel further submits that the petitioners cannot be allowed to face the vengeance of the dispute arising out of outburst of the complaint filed by petitioner no.8 against the Opposite Party No.2 and other family members under Section 498-A of the Indian Penal Code. The truth remains that without verifying the fact that the petitioner nos. 7 and 8 are now enjoying their happy marriage life that bail court has taken cognizance. In these background and circumstances, learned counsel submitted that taking vengeance out of private or personal grudge is not sustainable in the eye of law as has been observed by the Apex Court in several judicial pronouncements.



4. Learned A.P.P. appearing on behalf of the State has submits that cognizance has been taken against the petitioners under Sections 147, 323, 341, 380 and 504 of Indian Penal Code and this Court cannot interfere with the order taking cognizance at the very threshold which will prejudice the Opposite Party No.2 and will amount to curtailing the jurisdiction of the Trial Court.

5. Having considered the rival submissions made by the parties and the law laid down by the Hon'ble Supreme Court in the case of ***Priyanka Srivastava v. State of U.P.*** (*supra*) it would be apt to reproduce the observation made in Paragraphs No. 30 and 31 which are reproduced hereinafter:

“30. In our considered opinion, a stage has come in this country where Section 156(3) CrPC applications are to be supported by an affidavit duly sworn by the applicant who seeks the invocation of the jurisdiction of the Magistrate. That apart, in an appropriate case, the learned Magistrate would be well advised to verify the truth and also can verify the veracity of the allegations. This affidavit can make the applicant more responsible. We are compelled to say so as such kind of applications are being filed in a routine manner without taking any



responsibility whatsoever only to harass certain persons. That apart, it becomes more disturbing and alarming when one tries to pick up people who are passing orders under a statutory provision which can be challenged under the framework of the said Act or under Article 226 of the Constitution of India. But it cannot be done to take undue advantage in a criminal court as if somebody is determined to settle the scores.

31. We have already indicated that there has to be prior applications under Sections 154(1) and 154(3) while filing a petition under Section 156(3). Both the aspects should be clearly spelt out in the application and necessary documents to that effect shall be filed. The warrant for giving a direction that an application under Section 156(3) be supported by an affidavit is so that the person making the application should be conscious and also endeavour to see that no false affidavit is made. It is because once an affidavit is found to be false, he will be liable for prosecution in accordance with law. This will deter him to casually invoke the authority of the Magistrate under Section 156(3). That apart, we have already stated that the veracity of the same can also be verified by the learned Magistrate, regard being had to the nature of allegations of the case. We are compelled to say so as a number of cases pertaining to fiscal sphere, matrimonial dispute/family disputes, commercial



offences, medical negligence cases, corruption cases and the cases where there is abnormal delay/laches in initiating criminal prosecution, as are illustrated in Lalita Kumari [(2014) 2 SCC 1 : (2014) 1 SCC (Cri) 524] are being filed. That apart, the learned Magistrate would also be aware of the delay in lodging of the FIR.”

6. The FIR is the place where the informant gives the story mobilizing the State Machinery engaging in the commission of cognizable offence. The Hon’ble Supreme Court in the case of ***Priti Gupta v. State of Jharkhand, reported in (2010) 7 SCC 667***, in paragraph no. 32 has held as follows:

“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.”

7. There is yet another judgment of Hon’ble Supreme Court in the case of Social Action Forum for ***Manav Adhikar v. Union of India reported in (2018) 10***



SCC 443, wherein following observations were made:

38. In Rajesh Sharma [Rajesh Sharma v. State of U.P., (2018) 10 SCC 472] , there is introduction of a third agency which has nothing to do with the Code and that apart, the Committees have been empowered to suggest a report failing which no arrest can be made. The directions to settle a case after it is registered is not a correct expression of law. A criminal proceeding which is not compoundable can be quashed by the High Court under Section 482 CrPC. When settlement takes place, then both the parties can file a petition under Section 482 CrPC and the High Court, considering the bona fide of the petition, may quash the same. The power rests with the High Court. In this regard, we may reproduce a passage from a three-Judge Bench in Gian Singh [Gian Singh v. State of Punjab, (2012) 10 SCC 303 : (2012) 4 SCC (Civ) 1188 : (2013) 1 SCC (Cri) 160 : (2012) 2 SCC (L&S) 988] . In the said case, it has been held that : (Gian Singh case [Gian Singh v. State of Punjab, (2012) 10 SCC 303 : (2012) 4 SCC (Civ) 1188 : (2013) 1 SCC (Cri) 160 : (2012) 2 SCC (L&S) 988] , SCC pp. 342-43, para 61)

“61. ... Inherent power is of wide plenitude with no statutory limitation but it has to be exercised in accord with the guideline engrafted in such power viz. : (i) to secure the ends of justice, or (ii) to prevent abuse of the process of any court. In what cases power to quash the criminal proceeding or complaint or FIR may be exercised where the offender and the victim have settled their dispute would depend on the facts and circumstances of each case and no category can be prescribed. However, before exercise of such power, the High Court must have due regard to the nature and gravity of the crime. Heinous and serious offences of mental



depravity or offences like murder, rape, dacoity, etc. cannot be fittingly quashed even though the victim or victim's family and the offender have settled the dispute. Such offences are not private in nature and have a serious impact on society. Similarly, any compromise between the victim and the offender in relation to the offences under special statutes like the Prevention of Corruption Act or the offences committed by public servants while working in that capacity, etc.; cannot provide for any basis for quashing criminal proceedings involving such offences. But the criminal cases having overwhelmingly and predominatingly civil flavour stand on a different footing for the purposes of quashing, particularly the offences arising from commercial, financial, mercantile, civil, partnership or such like transactions or the offences arising out of matrimony relating to dowry, etc. or the family disputes where the wrong is basically private or personal in nature and the parties have resolved their entire dispute. In this category of cases, the High Court may quash the criminal proceedings if in its view, because of the compromise between the offender and the victim, the possibility of conviction is remote and bleak and continuation of the criminal case would put the accused to great oppression and prejudice and extreme injustice would be caused to him by not quashing the criminal case despite full and complete settlement and compromise with the victim.”

8. The complaint further shows that already in course of time, the parties may have settled the dispute amicably which is purely private in nature as the petitioner no.8 has no grievance against her husband (petitioner no.7)



rather the complaint lodged by the O.P. No.2, who is the sister of petitioner no.7 and sister-in-law of petitioner no.8 and other petitioners who are in-laws appears to be out of vengeance.

9. It appears to be proper to reproduce the exception which has been held in paragraph no. 108 of the landmark judgment passed by the Apex Court in the case of State of *Haryana and Ors. v. Bhajan Lal and Ors* reported in *1992 Supp (1) SCC 335*, the same is reproduced hereinafter:

“108. No doubt, there was no love lost between Shri Bhajan Lal and Dharam Pal. Based on this strained relationship, it has been then emphatically urged by Mr K. Parasaran that the entire allegations made in the complaint due to political vendetta are not only scurrilous and scandalous but also tainted with mala fides, vitiating the entire proceedings. As it has been repeatedly pointed out earlier the entire matter is only at a premature stage and the investigation is not yet proceeded with except some preliminary effort taken on the date of the registration of the case, that is on November 21, 1987. The evidence has to be gathered after a thorough investigation and placed before the court on the basis of which alone the



court can come to a conclusion one way or the other on the plea of mala fides. If the allegations are bereft of truth and made maliciously, we are sure, the investigation will say so. At this stage, when there are only allegations and recriminations but no evidence, this court cannot anticipate the result of the investigation and render a finding on the question of mala fides on the materials at present available. Therefore, we are unable to see any force in the contention that the complaint should be thrown overboard on the mere unsubstantiated plea of mala fides. Even assuming that Dharam Pal has laid the complaint only on account of his personal animosity, that, by itself, will not be a ground to discard the complaint containing serious allegations which have to be tested and weighed after the evidence is collected. In this connection, the following view expressed by Bhagwati, C.J. in Sheonandan Paswan v. State of Bihar [(1987) 1 SCC 288, 318 : 1987 SCC (Cri) 82] may be referred to : (SCC p. 318, para 16)

“It is a well established proposition of law that a criminal prosecution, if otherwise justifiable and based upon adequate evidence does not become vitiated on account of mala fides or political vendetta of the first informant or the complainant.”

Beyond the above, we do not wish to add anything more.”



10. It is question of a common observation that every matrimonial case is being exaggerated manifold with allegations of dowry related atrocities involving the husband and all family members. This rampant practice now-a-days has adversely been affecting our social fabric.

11. Considering the facts which emanates from the pleading made in the quashing application, as well as, the order taking cognizance, it only shows that the Opposite Party No.2 with ulterior motive and malicious intention has filed the present complaint case which is fit to be quashed. The order taking cognizance and the further proceeding of the case is accordingly set aside and quashed.

12. Accordingly, the quashing application stands disposed of.

(Purnendu Singh, J)

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Uploading Date	
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