

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.17188 of 2016

Arising Out of PS. Case No.-1144 Year-2015 Thana- DARBHANGA COMPLAINT CASE
District- Darbhanga

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1. Pramod Kumar Malik son of Late Shiv Kumar Malik
 2. Sunil Malik @ Prashat Kumar @ Prashant Malik
 3. Sudhir Malik
 4. Ramdhir Malik
All son of Pramod Kumar Malik
 5. Mamta Kumari @ Shadhana Kumari
 6. Rim Jhim Kumari @ Swati Malil
Both daughter of Pramod Kumar Malik
 7. Shobha Malik @ Shobha Devi wife of Pramod Kumar Malik
All resident of village Amata P.S. Baheri, District Darbhanga.

... .. Petitioner/s

Versus

1. State of Bihar
2. Mahalaxmi Devi wife of Jawahar Mandal, resident of village Amata P.S. Baheri District Darbhanga.

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr.Sunil Kumar Pathak, Advocate
For the Opposite Party/s : Mr.Ajit Kumar, APP

CORAM: HONOURABLE MR. JUSTICE PURNENDU SINGH
ORAL ORDER

8 20-09-2023 Heard Mr. Sunil Kumar Pathak, learned counsel
appearing on behalf of the petitioners and Mr. Ajit Kumar,
learned APP for the State.

2. The present application has been filed for
quashing of order dated 02.03.2016 passed in Complaint Case
bearing C.R.No.1144 of 2015 whereby and whereunder the



learned A.C.J.M., Darbhanga has taken cognizance under Sections 341, 379 and 504/34 of the Indian Penal Code.

3. Learned counsel appearing on behalf of the petitioners submits that the present complaint case is based on false allegation that the petitioner had intered into the house of the complainant and abused her and on protest, they assaulted and snatched gold chain and other items.

4. Learned counsel further submits that the present complaint case is outburst of the FIR lodged by the petitioner no.1 on 27.06.2015 under Sections 341, 323, 504, 354 and 379/34 of the Indian Penal Code. The allegation made therein is that the complainant is co-villager and next door neighbour of the petitioners, who used to consume country-made liquor and deliberately create nuisance and when the petitioners objected the same, the complainant along with other accused persons named in the FIR assaulted upon the petitioners and outraged the modesty of the daughter of petitioner no.1. The complainant also snatched the gold chain from the neck of daughter of petitioner no.1. Learned counsel further submits that the cognizance was taken in the said case on 31.07.2015 and thereafter a proceeding under Section 107 Cr.P.C. was also initiated against the complainant/Opposite Party and the



summon was issued under Section 113 and 114 Cr.P.C. by the order of the S.D.J.M., Darbhanga on 15.07.2015 and on filling of the bond under Section 107 Cr.P.C., summon was issued to the complainant/Opposite Party by the S.D.J.M., Darbhanga.

5. Learned counsel further submits that from the very perusal of the complaint petition, it would appear that the same has been lodged in retaliation to the FIR lodged by the petitioner no.1, in which summons have already been issued to the complainant side. The complainant as on date is still threatening the petitioners of dire consequences and if the present criminal proceeding is continued, the same will be abuse to the process of law. On this ground, the learned counsel appearing on behalf of the petitioners has sought for quashing of order taking cognizance dated 02.03.2016. Learned counsel in support of his submissions has relied on the judgment passed in the case of **Salib @ Shalu @ Salim Vs. State of U.P. & Ors. in Criminal Appeal No.2344 of 2023 arising out of S.L.P. (Criminal) No.3152 of 2023**, in which principle of law laid down in several judgments has been discussed by the Apex Court relating to quashing of criminal cases under Section 482 of Cr.P.C.

6. Learned counsel further submits that from bare perusal of the complaint petition and the materials



accompanying to the complaint petition and the evidence collected in support of the same do not disclose commission of any offence and make out a case against the petitioners. The allegation *prima facie* appears to be absurd instituted with ulterior motive for wreaking vengeance on the accused with a view to spite them due to private and personal grudge. Therefore, it will not be just to allow the vexatious proceeding to continue, which will amount to misuse of process of law.

7. Learned counsel further submits that this Court after *prima facie* finding that the complaint to be frivolous had granted interim protection to the petitioners, vide order dated 01.08.2016.

8. Learned APP has vehemently opposed the submissions made on behalf of the petitioners and has submitted that the offence as alleged against the petitioners *prima facie* are cognizable offence and this Court must restrain from interfering with the order taking cognizance. The only course which remains open before the petitioners is to face the trial and prove their innocence before the trial court.

9. Having considered the rival submissions made by the parties, this Court finds that the Apex Court time and again has observed that the High Court while exercising its



jurisdiction under Section 482 Cr.P.C. or Article 226 of the Constitution of India need not restrict itself only to the stage of a case but is empowered to take into account the overall circumstances leading to initiation/registration of the case as well as materials collected in course of the investigation.

10. Taking into consideration the facts, which have emanated, and the background in which the present complaint has been lodged against the petitioners, it appears that earlier to lodging of the complaint by the complainant, the petitioners side had lodged an FIR on 27.06.2015, in which the charge-sheet has also been submitted against the complainant and thereafter out of private and personal grudge, the complainant lodged the present complaint. The petitioners were threatened of dire consequences and a proceeding under Section 107 Cr.P.C. was also initiated against the complainant, in which summons have been issued. In the present proceeding, the notices were issued to the Opposite party/complainant and the allegation appears to be ornamental just to attract the ingredients of cognizable offence.

11. The Apex Court in the case of **State of Haryana & Ors. Vs. Ch. Bhajan Lal & Ors.** reported in **AIR 1992 SC 604** in the backdrop of interpretation of various judgments on



provisions of Code of Criminal Procedure and exercise of extraordinary power under Section 482 of Cr.P.C. and Article 226 of the Constitution of India has laid down the exception in which the Court to secure the ends of justice may proceed to interfere with the criminal proceeding and quash the same. Sub Para 7 of Paragraph no.108 is relevant, which is re-produced hereinafter as follows :

“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.”

12. Considering the aforesaid proposition of law laid down by the Apex Court as well as the recent judgment passed by the Apex Court in the case of **Salib @ Shalu @ Salim Vs. State of U.P. & Ors.** (supra), wherein the Apex Court held in paragraph no.26, which is reproduced hereinunder :

“26. At this stage, we would like to observe something important. Whenever an accused comes before the Court invoking either the inherent powers under Section 482 of the Code of Criminal Procedure (CrPC) or extraordinary jurisdiction under Article 226 of the Constitution to get the FIR or the criminal proceedings quashed essentially on the ground that such proceedings are manifestly frivolous or vexatious or instituted with the ulterior motive for wreaking vengeance, then in such circumstances the Court owes a duty to look into the FIR with care and a little more closely. We say so because once the complainant



decides to proceed against the accused with an ulterior motive for wreaking personal vengeance, etc., then he would ensure that the FIR/complaint is very well drafted with all the necessary pleadings. The complainant would ensure that the averments made in the FIR/complaint are such that they disclose the necessary ingredients to constitute the alleged offence. Therefore, it will not be just enough for the Court to look into the averments made in the FIR/complaint alone for the purpose of ascertaining whether the necessary ingredients to constitute the alleged offence are disclosed or not. In frivolous or vexatious proceedings, the Court owes a duty to look into many other attending circumstances emerging from the record of the case over and above the averments and, if need be, with due care and circumspection try to read in between the lines. The Court while exercising its jurisdiction under Section 482 of the CrPC or Article 226 of the Constitution need not restrict itself only to the stage of a case but is empowered to take into account the overall circumstances leading to the initiation/registration of the case as well as the materials collected in the course of investigation. Take for instance the case on hand. Multiple FIRs have been registered over a period of time. It is in the background of such circumstances the registration of multiple FIRs assumes importance, thereby attracting the issue of wreaking vengeance out of private or personal grudge as alleged.”

13. The continuation of proceeding will only amount to vexatious and abuse of process of law. The material brought on record would only attract that the petitioners can not be allowed to face the issue of petty vengeance out of private and personal grudge as alleged by the complainant.

14. Accordingly, order dated 02.03.2016 passed in



C.R.No.1144 of 2015 by the learned A.C.J.M., Darbhanga is hereby set aside and the matter is remitted to the learned court below for passing fresh order in accordance with law.

15. With the above observation/direction, the present quashing application is disposed of.

(Purnendu Singh, J)

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