

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.32105 of 2023

Arising Out of PS. Case No.-466 Year-2022 Thana- SHASTRINAGAR District- Patna

Saket Gupta, son of Sri Dinesh Kumar, Resident of Mohalla-Daldali Road,
Bakarganj, P.S.-Kadam Kuan, District-Patna (Bihar)

... .. Petitioner

Versus

1. The State of Bihar.
2. Ashiki Kumar, Askhi Kumari Wife Of Sri Abhishek Kumar, Daughter Of
Late Surendra Prasad Resident of Village- Maniyargunj, P.S.- Makhdumpur,
Post Office- Kalanaur, Pin Code-804427, District- Jehanabad (Bihar)

... .. Opposite Parties

Appearance :

For the Petitioner	:	Mr. Baua Jha, Advocate
For the Opposite Party	:	Mr. Narsingh Tanti, APP

CORAM: HONOURABLE MR. JUSTICE SANDEEP KUMAR
ORAL JUDGMENT
Date : 11-07-2023

This application has been filed for quashing of the F.I.R. vide Shastri Nagar P.S. Case No.466 of 2022 registered for the offence under Sections 341, 323, 504, 498-A & 506/34 of the Indian Penal Code and under Sections 3/4 of the Dowry Prohibition Act. Alternatively, it has been prayed that investigation of the F.I.R. be monitored by this Court and necessary enquiry in availing all relevant facts including audio visual electronic documents (CCTV video and audio footage of all the cameras installed at the premise of Shastri Nagar Police Station from 03.08.2022 to 06.08.2022), mobiles locations, phone call details, google foot print etc. of informant and other officials of the said Police Station may be examined by this Court.



2. The prosecution story is based upon a hand written report of the informant namely, Ashiki Kumari *inter alia* alleging that she was married to co-accused Abhishek Kumar, who is a loco pilot and is posted at Kanpur. At the time of marriage, the parents to the informant had given Jewelleries and other gifts like furniture, refrigerator, T.V., cooler etc. but her husband sold all the aforesaid gifts at a low price by saying that all these items are available in his house. It is further alleged that after two months of her marriage, her husband and in-laws started torturing the informant. It is further alleged that due to COVID-19 the father of the informant died and her mother received Rs.4,00,000/- as compensation from the State Government but when this fact came to the knowledge of her husband, he started pressuring the informant to give the compensation amount. On account of non-fulfillment of the demand, the informant was beaten by her husband and in-laws. It is also alleged that after a Panchayati, the informant went along with her husband at Kanpur, where also she was beaten by her husband and subsequently, the informant returned back to her matrimonial home. It is also alleged that a friend of the husband of the informant namely, Saket Gupta, who is an advocate by profession, used to come to her matrimonial house



and looked at the informant with evil eyes and assured her husband and other family members that he will help to get rid of the informant by procuring divorce from the Court. It is also alleged that thereafter, the husband of the informant took her to her parents house and when she returned back to her matrimonial house at Patna, she was not allowed to enter into the house and her in-laws have verbally and physically abused her.

3. Learned counsel for the petitioner submits that the petitioner is a regular practitioner of this Court since 2015 and he is the friend of the husband of the informant. According to the petitioner, the real story is that on 03.08 2022 at about 18:03 hours, Abhishek Kumar (husband of the informant) received a missed call on his mobile phone and when he called back on the same mobile number at around 18:10 hours, one lady Sub Inspector of Police namely, Smt. Smita Sinha picked up the phone call and informed that that his wife has come to register a complaint against him, to which he replied that he himself took his wife to her parent's house and he does not want to live with his wife. The lady police officer then asked him to visit Shastri Nagar police station immediately within 10 minutes. Thereafter, said Abhishek Kumar called his



advocate namely, Mr. Saket Gupta (petitioner) on his mobile and sought his legal help and also requested the petitioner to accompany him to Shastri Nagar Police Station. Thereafter, the petitioner along with two colleagues namely, Mayank Shekhar and Mr. Rajni Kant Singh accompanied Mr. Abhishek Kumar and reached Shastri Nagar Police Station at around 19:00 hours on 03.08.2022. After their arrival, the lady police officer namely Smt. Smita Sinha asked Abhishek Kumar to come inside the office and further asked the petitioner and his colleagues to stay outside the police station by saying that she needs to interrogate Abhishek Kumar. Thereafter, the lady police officer namely, Smt. Smita Sinha started interrogating Abhishek Kumar in very rude manner and then another Sub Inspector of Police namely, Sri Lal Bahadur Yadav suddenly came without any cause and slapped Abhishek Kumar. This incident compelled the petitioner and his colleagues to approach Smt. Smita Sinha and the informant namely, Sri Lal Bahadur Yadav to request them not to get physical with Abhishek Kumar. Upon which, the informant namely Sri Lal Bahadur Yadav aggressively approached towards the petitioner and his colleagues with filthy and abusive language. He then pushed the petitioner and his colleagues out of the office and also slapped the petitioner number of times and



pushed him out of the office. When the petitioner said that he will bring this incident to the notice of the Superintendent of Police, the informant became violent and aggressive and pushed the petitioner and pounced upon him and thereafter threatened that he will shoot him. The informant also tried to open a box in which the arms and ammunition of the police station was kept with a view to take out arms to shoot the petitioner. The petitioner after coming out of Shastri Nagar Police Station, immediately made a Complaint to the online number of Superintendent of Police available on internet from his mobile number. According to the petitioner, the whole incident was narrated to them on telephone. They informed the petitioner that they have generated one PCR Complaint bearing Complaint No. 15/2022. Thereafter, the Station House Officer namely Sri Ram Shankar Singh arrived at Shastri Nagar Police Station in between 19:30 hours 19.45 hours on 03.08.2022. The Petitioner and his colleagues made an oral complaint to the Station House Officer regarding the misbehaviour of the informant, Smt. Sinha and Prahlad Jha but the Station House Officer asked the petitioner and his colleagues to go home and assured them that he will take action against the erring police officials on the next day after perusing the CCTV video and audio footage.



4. Learned counsel for the petitioner further submits that the petitioner made a complaint to the Superintendent of Police (City), Patna and Director General of Police, Bihar through e-mail which was sent at 20:30 hours on 03.08.2022 by the e-mail ID of the petitioner. The email was sent from the mobile of the petitioner outside the premises of the Shastri Nagar Police Station. He further submits that one of the colleague of the petitioner namely, Mayank Shekhar in order to make a complaint regarding the aforesaid incident also called twice on the mobile number of the Senior Superintendent of Police, Patna from his mobile but the Senior Superintendent of Police, Patna chose not to attend the call.

5. Learned counsel for the petitioner further submits that the petitioner along with his colleagues left Shastri Nagar Police Station at around 21:00 hours on 03.08.2022 and after leaving the police station, the petitioner sent a whatsapp message to Abhishek Kumar at 21:19 hours and asked him to call back when he came out of Shastri Nagar Police Station. Abhishek Kumar asked the lady officer namely, Smt. Smita Sinha whether he should stay in the police station for further inquiry or he can leave, to which the lady officer Smt. Smita Sinha replied that it was upon his choice. Upon getting such



reply, Abhishek Kumar left the police station at about 21:25 hours on 03.08.2022. Subsequently, Abhishek Kumar received 10 missed calls from the mobile number of the lady police officer namely Smt. Smita Sinha and one missed call from Sub Inspector of Police namely, Prahlad Jha after leaving the police station. Abhishek Kumar received a call of lady Sub Inspector of Police namely Smt. Smita Sinha at 21:46 P.M. wherein she asked him to come to police station again and even the SHO namely, Ram Shankar Singh attended the call and asked him to come to police station to hear his version of the dispute with his wife but Abhishek Kumar being horrified and traumatised with the occurrence that took place, he chose not to visit the police station.

6. Learned counsel for the petitioner further submits that the petitioner had witnessed a horrific and hostile behaviour of police in the Police Station. He further submits that the instant F.I.R. is an ante-dated F.I.R. instituted by the police with the help of the informant in order to save themselves from horrific act which was committed by them against the petitioner, his friends.

7. It has also been argued that the General Register shows that the concerned F.I.R. i.e. Shastri Nagar P.S.



Case No. 466 of 2022 was received by the G.R. office in the late evening of 06.08.2022. It has further been argued that the apprehension of the petitioner that the informant will institute an ante-dated F.I.R. found strength from the fact that other F.I.Rs from the same police station which were instituted before and after the present F.I.R. were received in the G.R. office before submission of present F.I.R. It has also been argued that the informant has filed by the present F.I.R. implicating the petitioner at the instance of the police officials only with a view to save their skin.

8. The counter affidavit of the State has supported the F.I.R. and the police officers have submitted that the F.I.R. may not be quashed.

9. I have considered the submissions of the parties and perused the materials on record. The petitioner is a regular practitioner of this Court and he had been advising the husband of the informant. From the record, it appears that the informant and her husband are having matrimonial dispute and the petitioner has been mala fide made accused in the present F.I.R. registered for the offence under Sections 341, 323, 504, 498-A and 506/34 of the Indian Penal Code and under section 3/4 of the Dowry Prohibition Act.



10. The main offence alleged in the F.I.R. under Section 498-A of the Indian Penal Code, which reads as under:-

Section 498-A. Husband or relative of husband of a woman subjecting her to cruelty.

“Whoever, being the husband or the relative of the husband of a woman, subjects such woman to cruelty shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine.

Explanation.—For the purposes of this section, “cruelty means”—

(a) any wilful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman; or

(b) harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand.”

11. On plain reading of Section 498-A of the Indian Penal Code, this Court is of the opinion that the ingredients of Section 498-A of the Indian Penal Code is not made out against the petitioner as he does not come under the purview of “relative” of the husband of the victim.

12. The Hon’ble Supreme Court in various judgments including the judgment rendered in the case of ***State of Haryana & Ors. Versus Bhajan Lal & Ors.*** reported in ***AIR***



1992 SC 604, has enumerated the categories under which the quashing application may be allowed. It will be relevant to quote paragraph no.102 of the aforesaid decision which reads as under:

“102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter 14 and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelized and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such a power should be exercised.

(1) Where the allegations made in the first information report or the complaint, even if they are taken at the face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the F.I.R. do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code;

(3) Where the uncontroverted allegations made in the FIR or complaint and the



evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused;

(4) Where the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code;

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused;

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party;

(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.”

13. From reading of the F.I.R. and the other materials brought on record, it appears that the F.I.R. vide Shastri Nagar P.S. Case No. 466 of 2022 has been filed mala



fidely against the petitioner, who is not the relative of the husband of the informant rather he is the lawyer of the hubsnad of the informant and had been advising her husband in the matter. A lawyer acting in his professional capacity in good faith cannot be subjected to criminal prosecution. In the opinion of this Court, the present F.I.R. is a maliciously one instituted with an ulterior motive for wreaking vengeance on the petitioner and with a view to spite him due to private and personal grudge.

14. Considering the aforesaid facts and also the law laid down by the Hon’ble Supreme Court in the case of **Bhajan Lal** (supra), this Court is of the opinion that continuation of investigation in the present case as against the petitioner will be an abuse of the process of the Court. Accordingly, this application is allowed and the F.I.R. vide Shastri Nagar P.S. Case No.466 of 2022 and all consequential proceedings arising out of the aforesaid F.I.R. are hereby quashed with respect to present petitioner only.

(Sandeep Kumar, J)

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AFR/NAFR	N.A.F.R.
CAV DATE	N/A.
Uploading Date	21.12.2023
Transmission Date	

