

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.1006 of 2016**

Arising Out of PS. Case No.-3 Year-2015 Thana- MAHILA P.S. District- Bhojpur

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1. Saurabh Dutta Pandey son of Sheonath Pandey
 2. Sheo Nath Pandey, son of Late Sachidanand Pandey Both resident of village- Karja, P.S.- Bihiya, District- Bhojpur

... .. Petitioner/s

Versus

1. State Of Bihar
2. Arti Kumari Devi, daughter of Late Sham Sunder Tripathi, resident of village- Jhauaon, P.S.- Bihiya, District- Bhojpur

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Sheo Jee Mishra
For the Opposite Party/s : Mr. A.M.P. Mehta App

CORAM: HONOURABLE MR. JUSTICE SANDEEP KUMAR
ORAL ORDER

7 16-08-2023 Heard learned counsel for the petitioners and learned counsel appearing on behalf of the State. None appears for the opposite party No. 2 despite service of notice.

2. The present application has been filed for quashing the order dated 8.4.2015 taking cognizance for the offences under Section 406/ 34 of the Indian Penal Code in connection with Ara Mahila police station Case No. 03/2015 by learned Sub- Divisional Judicial Magistrate, Bhojpur at Ara.

3. The prosecution story is that the complainant/ informant was married with the petitioner No.1 and the



petitioner No. 2 is the father-in-law of the complainant. It is alleged in the complaint petition that all the articles of the complainant have been kept with the petitioners and now they are not returning the articles. The complaint petition was sent under Section 156 (3) Cr. P.C. to lodge a police case. The police registered First information report as Mahila Police Station Case No. 03/2015 and took up investigation.

4. Learned counsel for the petitioners submits that the police investigated the case and came to conclusion that entire allegation of the informant is totally false and fabricated. It is further submitted that the police submitted final form and categorically submitted that the present case is false and fabricated. It is also submitted that the superior police officer ordered to lodge a case against the informant under Section 182/211 of Indian Penal Code.

5. Learned counsel for the petitioner next submits that the entire prosecution witnesses have said categorically that one Ajay Kumar Choubey who is brother-in-law of the informant was entangled with the informant prior to the marriage with the petitioner No.1. The informant has also lodged a case in the family court and she has been receiving maintenance Rs. 4000/- per month. The informant has lodged an another case under



Section 498 (A) Indian Penal Code. Thus she has become a court bird and all these cases have been lodged at the instance of her brother-in-law (*Bhanoi*) namely Ajay Kumar Choubey who brought her from the matrimonial house on the very first day of the marriage and kept her in his house. The newly wedded bride has not stayed even for a single day in her *Sasural*.

6. It is also submitted on behalf of the petitioners that the learned Sub Divisional Judicial Magistrate, Bhojpur, Ara differed with the investigation and took cognizance of the offence under Section 406/34 against the petitioners which is without any basis and which is illegal in the eyes of law. Thus the order taking cognizance is bad in the eyes of law.

7. The impugned order passed by the Magistrate has not discussed the materials except the statement of the complainant and her mother.

8. From reading of the F.I.R., it appears that this is a malicious prosecution initiated by the opposite party No. 2 and the same cannot be allowed to continue in view of the law laid down by the Hon'ble Supreme Court in the case of *State of Haryana Vs. Bhajan Lal [1992 Supp (1) SCC 335]*, this application is allowed.

9. Accordingly, the order dated 08.04.2015 taking



cognizance for the offences under Section 406/ 34 of the Indian Penal Code in connection with Ara Mahila police station Case No. 03/2015 by learned Sub- Divisional Judicial Magistrate, Bhojpur at Ara is hereby quashed with respect to the petitioners only in the interest of justice.

(Sandeep Kumar, J)

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