

Arising Out of PS. Case No.-141 Year-2014 Thana- SITAMARHI COMPLAINT CASE
District- Sitamarhi

- Petitioner/s

1. State Of Bihar
2. Gargi Kumari, W/o Shyam Chandra Goel, D/o Girdhari Prasad, resident of Bairgania, Near State Bank of India, P.S.- Bairgania, District- Sitamarhi.

... .. Opposite Party/s

For the Petitioner/s : Mr. Alok Kumar Jha, Advocate
For the State : Mr. Md. Fahimuddinapp, APP
For the O.P. No. 2 : ***NONE***

6 13-09-2023 **1.** Heard learned counsel for the petitioner and
learned counsel for the APP.

2. There is no appearance on behalf of the Opposite Party No. 2.

3. As per the report of the process server, the complainant has herself received the notice. The office has also reported this fact. The notice is treated to be validly served upon



Opposite Party No. 2. Both services were effected in the year 2016 itself on 06-06-2016.

4. Learned counsel for the petitioner submits that from the allegations made in the complaint case, it is apparent that with respect to Petitioner Nos. 2 to 4, there is no allegation in the complaint, based on which cognizance has been taken under Section 323, 341, 504/34 of the Indian Penal Code (for brevity 'I.P.C.') The order of cognizance is dated 26-03-2015.

5. It is further submitted that having regard to the settled parameters for quashment of order taking cognizance and criminal proceedings, the order is unsustainable, inasmuch as even if the allegations made in the complaint are taken on their face value, no offence under the Sections 323, 341, 504/34 would be made out against petitioner nos. 2- 4.

6. From bare perusal of the complaint petition, the Court finds that the complainant has lodged the complaint case alleging that she has been assaulted and demand for dowry has been repeated. The occurrence has taken place when a compromise was being attempted by the parties in connection with Baigania P.S. Case No. 100/2011 earlier lodged by the same complainant.

7. It is apparent from bare perusal of the complaint



petition, and allegations levelled therein that ingredients of the offences under Section 323/341 or 504 are not made out with reference to the Petitioner Nos. 2 to 4. With reference to Petitioner Nos. 1 & 5, however the complainant has made allegation of assault and of trying to throttle the complainant. The order taking cognizance therefore with reference to Petitioner Nos. 2 to 4 is unsustainable in light of settled legal position, for quashing of order taking cognizance, by the Hon'ble Apex Court in case of *Ahmad Ali Quraishi v. State of U.P.*, reported in *(2020) 13 SCC 435*. The Hon'ble Apex Court has again enumerated the categories of cases where power can be exercised by the High Court for quashing criminal proceedings. Paragraph No. 10 of this judgment is relevant in this context and reads as follows:-

“10. Before we enter into facts of the present case and submissions made by the learned counsel for the parties, it is necessary to look into the scope and ambit of inherent jurisdiction which is exercised by the High Court under Section 482 CrPC. This Court had the occasion to consider the scope and jurisdiction of Section 482 CrPC. This Court in State of Haryana v. Bhajan Lal [State of Haryana v. Bhajan Lal, 1992 Supp (1) SCC 335: 1992 SCC (Cri) 426], had elaborately considered the scope and ambit



of Section 482 CrPC/Article 226 of the Constitution in the context of quashing the criminal proceedings. In para 102, this Court enumerated seven categories of cases where power can be exercised under Article 226 of the Constitution/Section 482 CrPC by the High Court for quashing the criminal proceedings. Para 102 is as follows: (SCC pp. 378-79)

"102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV 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 channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

(1) Where the allegations made in the first information report or the complaint, even if they are taken at their 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 FIR 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 Act concerned (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 Act concerned, 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.”

8. Since from bare reading of the uncontroverted allegations, no ingredients of the offences under which cognizance has been taken are made out against petitioner Nos. 2 to 4, the order taking cognizance insofar as Petitioner Nos. 2 to 4 are concerned is quashed.

9. Insofar as Petitioner nos. 1 & 5 are concerned, from bare perusal of the complaint, after placing the allegation in the complaint, learned counsel has not been able to convince the Court that on the same grounds, the case can be quashed in exercise of jurisdiction under Section 482 of the Code of Criminal Procedure, with respect to Petitioner Nos. 1 & 5.



Insofar as Petitioner Nos. 1 & 5 are concerned, application is dismissed.

(Madhuresh Prasad, J)

Raj kishore/-

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