

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.28075 of 2021

Arising Out of PS. Case No.-129 Year-2019 Thana- CHOUTARWA District- West
Champaran

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1. Rajdeo Kharwar @ Rajdeo Prasad @ Ram Pravesh Prasad Son of Late Gorakh Kharwar @ Gauri Shankar Prasad Resident of Village- Palat Rai, P.S.- Gopalpur, District- Gopalganj (Bihar).
 2. Bhaskar Prasad @ Bhaskar Kharwar Son of Rajdeo Kharwar Resident of Village- Palat Rai, P.S.- Gopalpur, District- Gopalganj (Bihar).

... .. Petitioner/s

Versus

1. The State Of Bihar
2. Sunil Kharwar Son of Late Sadhu Kharwar Resident of Village- Hamira, Prasauni Farm, P.S.- Chautarwa, District- West Champaran.

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr. Ram Chandra Sahani, Advocate
For the State	:	Mr. Harendra Prasad, APP
For the Opposite Party No.2	:	Mr. Milind Kumar Mishra, Advocate

CORAM: HONOURABLE MR. JUSTICE HARISH KUMAR
ORAL ORDER

5 02-08-2024 Heard Mr. Ram Chandra Sahani, learned Advocate for the petitioner and the learned Additional Public Prosecutor for the State. The opposite party No. 2 is presented through Mr. Milind Kumar Mishra, learned Advocate.

2. The petitioners by invoking the inherent jurisdiction of this Court under Section 482 of the Cr.P.C. seeks quashing of the order dated 31.10.2020 whereby the learned A.C.J.M. 1st, Bagaha took cognizance of the offence under Section 420, 406 of the Indian Penal Code and $\frac{3}{4}$ of the Dowry Prohibition Act against the petitioners on the basis of charge-sheet No.185 of 2020 submitted in connection with Chautarwa P.S. Case No.129 of 2019.



3. Initially a complaint was lodged by the opposite party No.2, which was later on sent to the concerned police station under Section 156(3) Cr.P.C. and accordingly, Chautarwa P.S. Case No.129 of 2019 has been registered for the offences punishable under Section 420, 406 of the Indian Penal Code and $\frac{3}{4}$ of the Dowry Prohibition Act.

4. The allegation levelled in the FIR speaks that with the consent of the parties the marriage of the daughter of opposite party No.2 was settled with petitioner No.2. On 03.07.2018 a Lagan Patrika was prepared and the date of the marriage was fixed on 19.02.2019. It is further alleged that at the time of Pujai of petitioner no.2, the opposite party no.2 has presented various gift articles worth Rupees Three Lac. It is also alleged that on account of the fixation of marriage, the agreement has also been done with the band party, electricity and the chariot. Despite the settlement of marriage the accused person did not turn up with the Baarat and the reason has been assigned that they have demanded Rupees Two Lac and a Hero Honda motorcycle and on account of non-fulfillment of the same they did not turn up and refused to solemnize marriage.

5. Learned Advocate for the petitioners contended that after institution of the FIR, investigation has been conducted



and it has found that no gift or any item has been given at the time of Pujai of the boy(petitioner No.2) and only the marriage was fixed, however, later on the petitioners and others came to know that the maternal grandfather of the girl suffers from leprosy due to which the marriage could not be finalize. It is next contended that even if the allegation taken to be true and accepted in the entirety do not constitute any offence under Section 406 and 420 of the Indian Penal Code, inasmuch as there was no fraudulent intention or misrepresentation on the part of the petitioners at the inception. Moreover, the police after investigation has not sent up the other family members for trial and the charge-sheet has been submitted only for these two petitioners, who happens to be father and son. It is also contended that the allegation levelled in the FIR only suggest that there was a demand of Rupees Two Lac and a Hero Honda motorcycle, however, that has never been executed. Drawing the attention of this Court to paragraph 23, 24 and 25 of the case diary, it is also contended that the independent witnesses, during the course of investigation have not supported the demand of dowry.

6. On the other hand the learned Advocate for the opposite party No.2 refuting the contention of the petitioner



submitted that right from very inception the intention of the petitioner was to defraud and misappropriate the articles which have been offered at the time of Pujai. The FIR clearly suggest that at the time of Pujai, petitioners have received gift worth Rupees Three Lac. It is also contended that the petitioner No.1 has also filed a complaint bearing 1383 of 2019 which was later on sent to the concerned police station and accordingly, Gopalpur P.S. Case No.123 of 2019 has been registered for the offences under Sections 420/406/323/379/307 of the Indian Penal Code. It is next contended that since the opposite party and his family members are poor and indigent person they could not approached before this Court for quashing of the same, however, they have suffered a lot on account of filing of aforenoted false case.

7. At this juncture, learned Advocate for the petitioners submits that for the ends of justice if this Court opines that there is a merit in the present application, the petitioners undertake that they will not proceed in the matter in connection with Gopalpur P.S. Case No.123 of 2019.

8. True it is that if set of events in the complaint or FIR does not spell criminality on the part of the alleged wrong doer, setting criminal law into motion or continuation of the



proceeding would be an abuse of the process of the Court and the proceeding is liable to be quashed.

9. Considering the rival contention of the parties and taking note of the allegation made in the FIR as well as the materials collected in investigation this court, *prima facie*, is of the opinion that no case under Sections 420, 406 of the Indian Penal Code is concerned. So far, the allegation under Section 3/4 of the Dowry Prohibition Act is concerned, there is no material that demand of dowry has ever been carried out. The witnesses whose statements have been recorded they have also not supported the allegation levelled in the FIR. Moreover, both the parties have apprised this Court that the bridegroom and the bride have settled their life; thus the continuation of criminal case would certainly hamper and ruin their life.

10. In view of the aforementioned facts, this Court while exercising the inherent jurisdiction finds that apart from lack of ingredients constituting the offence, the narratives in the FIR do not spell criminality on the part of petitioners, thus the initiation of the proceeding arising out of Chautarwa P.S. Case No.129 of 2019 as well as the order taking cognizance dated 31.10.2020 is an abuse of the process of the Court and it requires interference for the ends of justice.



11. Accordingly, the impugned order dated 31.10.2020 stands quashed.

12. This Court further direct the petitioners to honour their undertaking given before this Court not to proceed in connection with Gopalpur P.S. Case No.123 of 2019. Suffice to say that non-compliance of the undertaking given before this Court shall be treated as defiance of the order of this Court.

(Harish Kumar, J)

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