

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.46214 of 2015

Arising Out of PS. Case No.-5 Year-2015 Thana- PATNA COMPLAINT CASE District-
Patna

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1. Rozy Kumari W/o Alok Priya
 2. Diwakar Kumar S/o Late Ramchandra Singh
 3. Prabha Devi W/o Diwakar Kumar All at present residing at village and P.O. - Jasitpur, P.S. Barahia, District - Lakhisarai.
 4. Rupesh Nahar @ Banty S/o Sri Satish Chandra Nahar
 5. Satish Chandra Nahar S/o Late Chandradeo Pasad Singh
 6. Ahilya Devi @ Krishna Nahar W/o Sri Satish Chandra Nahar All residents of village - Noili, P.S. - Bathani, District - Gaya at present residing at Road No. 3 Adarsh Nagar, Khemnichak near Upkar Public School, P.S. Ram Krishna Nagar, District - Patna.

... .. Petitioner/s

Versus

1. State of Bihar and Anr
2. Alok Priya S/o Binod Kumar Singh @ Tulsi Singh resident of village - Moldiar Tola, P.S. - Mokama, District - Patna.

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr. Subodh Kumar Jha, Advocate Mr. Pranav Kumar Jha, Advocate Mr. Chandra Mohan Jha, Advocate
For the Opposite Party/s	:	Mr. Sanjay Kumar Sharma APP

CORAM: HONOURABLE MR. JUSTICE CHANDRA SHEKHAR JHA
ORAL JUDGMENT

Date : 21-02-2024

1. Despite proper notice, Opposite Party No. 2 failed to join the present proceeding.

2. This application is being filed for quashing of the order taking cognizance dated 10.04.2015 passed in Complaint case No.05 (C)/2015 by learned Judicial Magistrate, 1st Class, Barh by which the learned Magistrate has taken cognizance



Under Section 323/494//504 of the Indian Penal Code.

3. The crux of complaint suggests that the Opposite Party No. 2 has filed a complaint case bearing Complaint Case No. 05(C)/15 against the petitioners in the court of Additional Chief Judicial Magistrate, Barh, District-Patna alleging therein that the petitioner no. 1 is his first wife, whereas petitioner no. 2 is brother of petitioner no. 1 whereas petitioner no. 4 is alleged second husband and rest are alleged in-laws of petitioner no.1. It is stated in the said complaint case that a Mokama P.S. Case No. 81/2008 corresponding to S.T. No. 296/2010 was filed by the petitioner no.1, who is the sister of petitioner no. 2 and during pendency of the said case the petitioner no. 1 solemnized her second marriage with the petitioner no.4 in the year 2013, which was concealed before the Hon'ble Patna High Court, while passing the interim maintenance at the rate of Rs. 750/- per month, when O.P. No. 2 approached High Court for bail in Mokama P.S. Case No. 81/2008.

4. Learned counsel appearing for the petitioners submitted that out of matrimonial discord, a complaint case was lodged by petitioner no. 1 against O.P. No. 2 being wife, which has been registered as 216(C) of 2008 before the court of



S.D.J.M., Lakhisarai, which was disposed of after compromise between the parties but after some time matrimonial discord, resurfaced between the parties and thereafter, a police case was instituted by petitioner no. 1 against O.P. No. 2, which has been registered as Mokama P.S. Case No. 81/2008 for the offence under Sections 323, 307, 498-A and 34 of the Indian Penal Code, which is still pending for trial. When O.P. No. 2 came to the Hon'ble High Court for bail in aforesaid police case, he was directed to pay Rs. 750/- per month as an ad-interim maintenance to petitioner no. 1/wife. In the meantime, petitioner no. 2 who is the brother of petitioner no. 1 also lodged a police case against O.P. No. 2, which has been registered as Barh P.S. Case No. 217/2014 for the offence alleged under Section 341/504/506/34 of Indian Penal Code and to counter the case lodged by petitioner no. 2, the present false complaint was filed before A.C.J.M., Barh, Patna, where without any cogent materials, cognizance for the offence under Sections 323/494/504 of Indian Penal Code was taken by learned Jurisdictional Magistrate. It is submitted that the present prosecutions were brought only with ulterior motives and as such can be safely categorized as malicious prosecutions, arises out of matrimonial discord. It appears that there is no any



documentary evidence in support of the marriage as alleged to be solemnized by petitioner no. 1 with petitioner no. 4 and merely on the basis of suspicion as petitioner no. 1 alongwith petitioners nos. 2 and 3, who are brother and bhabhi reside in rented house owned by parents of petitioner no. 4, the present false implication appears to be raised, where petitioners nos. 5 and 6 are parents of petitioner no. 4.

5. It would be apposite to reproduce the paragraph no. 102 of the Apex Court decision in the case of ***State of Haryana and Others vs. Bhajan Lal and Others*** reported in ***1992 Supp (1) Supreme Court Cases 335***, which reads as under:

“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 informant 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 persons 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.”

6. In view of aforesaid factual and legal submissions, allegation as raised through present complaint case *qua* second marriage by petitioner no. 1 during lifetime of O.P. No. 2 without dissolving their marriage appears *prime facie* out of ulterior motives for wreaking vengeance and with a view to spite due to private and personal grudge in background of matrimonial disputes, which appears covered by guideline no. 7 of ***Bhajan Lal (supra)***.

7. Accordingly, the application stands allowed.

8. Hence, the order taking cognizance dated 10.04.2015 passed in Complaint Case No. 05(c) of 2015, by the



learned Judicial Magistrate 1st Class, Barh is hereby quashed and set aside with all its consequential proceedings qua petitioners above named.

9. TCR (Trial Court Records), if any, be returned to learned trial court alongwith the copy of this judgment.

(Chandra Shekhar Jha, J)

Archana/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	26.02.2024
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