

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.49275 of 2015

Arising Out of PS. Case No.-51 Year-2013 Thana- MAHILA PS District- Jamui

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1. Lalita Devi Wife of Late Radha Mohan Prasad,
 2. Reena Devi, Daughter of Late Radha Mohan Prasad,
 3. Jyoti @ Jyoti Sinha, Daughter of Late Radha Mohan Prasad,
 4. Pankaj @ Pankaj Kumar Lal, Son of Late Radha Mohan Prasad,
 5. Neeraj Kumar, son of Late Radha Mohan Prasad, All are resident of Bari Chandwari maidan, Quarters No. 398A, Jhajha, Police Station - Jhajha in the district of Jamui.

... .. Petitioner/s

Versus

1. The State of Bihar.
2. Sudha Kumari Devi, Daughter of Parmanand Sao, Resident of Bari Chandwari Maidan, Quarters No. 3381 Jhajha, Police Station - Jhajha in the district of Jamui.

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr.Raj Kumar, Advocate
For the Opposite Party/s : Mr.Parmanand Kumar, APP

CORAM: HONOURABLE MR. JUSTICE CHANDRA SHEKHAR JHA
ORAL JUDGMENT

Date : 04-03-2024

1. Heard learned counsel appearing on behalf of
the parties

2. At the outset, it is important to mention that
the name of petitioner no. 5, i.e. husband of
complainant/opposite party no. 2, namely, Neeraj Kumar
deleted vide order dated 20.03.2023 of this Court, and,
now this petition survives for petitioner nos. 1 to 4 only,



where petitioner no. 1 is mother-in-law, petitioner nos. 2 and 3 are sisters-in-law and petitioner no. 4 is brother-in-law.

3. The present quashing petition has been preferred against the order dated 8.8.2014 passed by learned Sub-Divisional Judicial Magistrate, Jamui, in connection with G.R. No. 1035 of 2013 (arising out of Jhajha Mahila P.S. Case No. 51 of 2019), where learned trial court took cognizance for the offence punishable under sections 376, 379, 420, 493, 494, 498(A)/34 of the Indian Penal Code and Section 3/4 of the Dowry Prohibition Act against the petitioners.

4. Factual matrix of the case is that opposite party no. 2 namely, Sudha Kumari Devi filed a written application before the Superintendent of Police, Jamui stating therein, inter alia that she is resident of Jhajha Railway Colony in the district of Jamui. She further stated that on 13.7.2011, she solemnized court marriage before the Notary Public, Buxar with Neeraj



Kumar, while he was working under Senior Section Engineer, passenger and goods B compartments, East Central Railway, Jhajha as a cleaning staff and his address was Quarter No. 398(A), Jhajha Railway Colony, Jamui. She further stated that after marriage he kept her in the house of Chandrashekhar Mishra, Budhanpurba, Ward No. 16, Buxar since 13.7.2011 till now. Neeraj Kumar was earlier married but before her marriage he produced a divorce paper *qua* his first marriage. She further stated that after some time his first wife filed a case u/s. 498(A) I.P.C. against Neeraj Kumar and due to which he kept to her at Buxar. After 3 months of her marriage, he torned her Notary marriage paper and when she started weeping, he again make a Notary Marriage paper dated 19.9.2011 and he gone to Jamui together with original paper. She further stated that on the basis of false assurance Neeraj Kumar started physical relation with her and after two years he denied to marriage compromised matter with 1st wife



and presently living with his 1st wife. She further stated that he regularly threatened to her and also threatened to kill her brother and father and raised demand of Rs. 5 lacs and a vehicle. She further stated that he stopped her house expense and also stopped to meet her at Buxar. She further stated that thereafter golden ornaments and cash Rs. 75,000/- also taken by her husband, namely, Neeraj Kumar. She further stated that after marriage she went to the house of Neeraj, where other accused persons/petitioners assaulted and abused her and finally ousted her from their house. She further shows her apprehension of threat to her life from Neeraj Kumar/husband.

5. That on the basis of aforesaid written application police lodged a formal information report and registered a case bearing Jamui, Mahila P.S. Case No. 51 of 2013 dated 21.6.2013 for the offence punishable under Sections 376,379,420,493,494,498(A)/34 of Indian Penal Code and Section 3/4 of Dowry Prohibition



Act.

6. It is submitted by learned counsel that petitioners were implicated falsely with present case for the simple reason that they are in-laws. It is submitted that from the perusal of FIR, the entire allegations is available against husband, namely, Neeraj Kumar, who is now no more petitioner in this case and maximum allegation as appears available against petitioners that when after solemnizing marriage complainant/opposite party no. 2 went to her matrimonial house, she was abused and ousted therefrom. It is submitted that allegation is appearing very much general and omnibus against petitioners. While concluding argument, it is submitted by learned counsel that from FIR itself, it appears that she was living separately after solemnizing her marriage at Buxar and Jamui, and she never resided in her matrimonial house and, therefore, the question of cruelty does not appears true against petitioners.

7. Learned APP opposes the prayer of



application

8. Notice was issued by this Court to opposite party no. 2 which was duly served upon her but she failed to join the present proceedings.

9. It would be apposite to reproduce paragraph 10 of the legal report of Hon'ble Supreme Court in the matter of ***Usha Chakraborty and Another Vs. State of West Bengal and Another, reported in 2023 SCC Online SC 90***, which is as under:-

10. In Neeharika Infrastructure Pvt. Ltd. v. State of Maharashtra, a three Judge Bench of this Court laid down the following principles of law:-

"57. From the aforesaid decisions of this Court, right from the decision of the Privy Council in the case of Khawaja Nazir Ahmad (supra), the following principles of law emerge:

i) Police has the statutory right and duty under the relevant provisions of the Code of Criminal Procedure contained in Chapter XIV of the Code to investigate into cognizable offences;



ii) Courts would not thwart any investigation into the cognizable offences;

iii) However, in cases where no cognizable offence or offence of any kind is disclosed in the first information report the Court will not permit an investigation to go on;

iv) The power of quashing should be exercised sparingly with circumspection, in the 'rarest of rare cases'. (The rarest of rare cases standard in its application for quashing under Section 482 Cr. P.C. is not to be confused with the norm which has been formulated in the context of the death penalty, as explained previously by this Court);

v) While examining an FIR/complaint, quashing of which is sought, the court cannot embark upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR/complaint;

vi) Criminal proceedings ought not to



be scuttled at the initial stage;

vii) Quashing of a complaint/FIR should be an exception and a rarity than an ordinary rule;

viii) Ordinarily, the courts are barred from usurping the jurisdiction of the police, since the two organs of the State operate in two specific spheres of activities. The inherent power of the court is, however, recognised to secure the ends of justice or prevent the abuse of the process by Section 482 Cr. P.C.

ix) The functions of the judiciary and the police complementary, not overlapping; are

x) Save in exceptional cases where non-interference would result in miscarriage of justice, the Court and the judicial process should not interfere at the stage of investigation of offences;

xi) Extraordinary and inherent powers of the Court do not confer an arbitrary jurisdiction on the Court to act



according to its whims or caprice;
xii) The first information report is not an encyclopaedia which must disclose all facts and details relating to the offence reported. Therefore, when the investigation by the police is in progress, the court should not go into the merits of the allegations in the FIR. Police must be permitted to complete the investigation. It would be premature to pronounce the conclusion based on hazy facts that the complaint/FIR does not deserve to be investigated or that it amounts to abuse of process of law. During or after investigation, if the investigating officer finds that there is no substance in the application made by the complainant, the investigating officer may file an appropriate report/summary before the learned Magistrate which may be considered by the learned Magistrate in accordance with the known procedure;
xiii) The power under Section 482 Cr. P.C. is very wide, but conferment of



wide power requires the court to be cautious. It casts an onerous and more diligent duty on the court;

xiv) However, at the same time, the court, if it thinks fit, regard being had to the parameters of quashing and the self-restraint imposed by law, more particularly the parameters laid down by this Court in the cases of R.P. Kapur (supra) and Bhajan Lal (supra), has the jurisdiction to quash the FIR/complaint; and

xv) When a prayer for quashing the FIR is made by the alleged accused, the court when it exercises the power under Section 482 Cr. P.C., only has to consider whether or not the allegations in the FIR disclose the commission of a cognizable offence and is not required to consider on merits whether the allegations make out a cognizable offence or not and the court has to permit the investigating agency/police to investigate the allegations in the FIR."

10. It would be further apposite to re-produce
para 102 of the ***State of Haryana and Ors. Vs.***



Bhajan Lal and Ors., 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.”

11. Hon'ble Apex Court in Arnesh Kumar



Vs. State of Bihar and Another reported in (2014)

8 SCC 273 has been pleased to observe that there is a phenomenal increase in matrimonial disputes in recent years. The institution of marriage is greatly revered in this country. Section 498-A IPC was introduced with avowed object to combat the menace of harassment to a woman at the hands of her husband and his relatives. The fact that Section 498-A IPC is a cognizable and non-bailable offence has lent it a dubious place of pride amongst the provisions that are used as weapons rather than shield by disgruntled wives. The simplest way to harass is to get the husband and his relatives arrested under this provision. In a quite number of cases, bedridden grandfathers and grandmothers of the husbands, their sisters living abroad for decades are arrested. In the said case, the Supreme Court has cautioned the courts with regard to proceeding against in-laws and distant relatives of the husband of the wife involved in the offence under Section 498-A of the IPC



and other relevant offences. This High Court in ***Brijesh Das @ Brijesh Kumar Das & Ors. Vs. The State of Bihar & Anr. reported in 2012(2) PLJR 545*** has also held that there is specific allegation made against husband and no statement that other relatives assaulted the complainant. Allegations made against petitioner nos. 2 to 6 are vague and omnibus allegation made against the relatives of the husband, would not be sufficient to put them on a trial and set aside the cognizance order against the petitioner nos. 2 to 6 who happen to be in-laws of the complaint.

12. In view of aforesaid factual and legal discussions, as petitioners are in-laws, where thrust of allegation is available against husband and apparently, opposite party no. 2 never joined her matrimonial home, accordingly, the order of cognizance dated 08.08.2014 passed by learned Sub-Divisional Judicial Magistrate, Jamui and its all consequential proceedings *qua*, abovenamed four petitioners, namely, Lalita Devi, Reena



Devi, Jyoti @ Jyoti Sinha and Pankaj @ Pankaj Kumar
Lal are hereby quashed and set aside.

13. The application stands allowed.

14. Let a copy of this order be sent to learned
Trial Court, immediately.

(Chandra Shekhar Jha, J)

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AFR/NAFR	AFR
CAV DATE	NA
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