

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.58386 of 2015

Arising Out of PS. Case No.-116 Year-1999 Thana- BANIAPUR District- Saran

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1. Awadhesh Kumar @ Awadhesh Ojha, Son of Late Bachcha Ojha, Resident of Village - Puchhari, P.S.- Baniyapur, District - Saran, Chapra
 2. Mahesh Ojha, Son of Late Bachcha Ojha, Resident of Village - Puchhari, P.S.- Baniyapur, District - Saran, Chapra
 3. Rajendra Ojha, Son of Dharam Nath Ojha, Resident of Village - Puchhari, P.S.- Baniyapur, District - Saran, Chapra

... .. Petitioners

Versus

1. The State of Bihar
2. Kanhaiya Pandey, Son of Late Chandra Bhushan Pandey, Resident of Village- - Pandey tola, P.S.- Bheldi, District - Saran Chapra

... .. Opposite Parties

Appearance :

For the Petitioner/s : Mr. Umesh Kumar Mishra, Advocate
For the Opposite Party/s : Mr. Navin Kumar Pandey, APP

CORAM: HONOURABLE MR. JUSTICE CHANDRA SHEKHAR JHA
ORAL JUDGMENT

Date : 09-04-2024

Heard learned counsel for the petitioners and
learned APP for the State.

2. This application has been filed by the petitioners for quashing of the order dated 02.12.2010 passed by learned 1st Additional Sessions Judge, Saran at Chapra in Criminal Revision No.300 of 2003/34A of 2004 whereby the learned Sessions Judge has dismissed the revision petition filed on behalf of the petitioners and confirmed the order



dated 07.05.2002 passed by learned Chief Judicial Magistrate, Saran at Chapra in Baniapur P.S. Case No.116 of 1999, U.T. No.858 of 2003 whereby the learned Jurisdictional Magistrate has taken cognizance against the petitioners and others for the offences punishable under Sections 304-B and 201 read with 34 of the Indian Penal Code (for short 'IPC').

3. The prosecution case, in brief, as per the complainant/opposite party no.2, namely, Kanhaiya Pandey is that his niece, namely, Phulmati Devi was married with Ganesh Ojha with the help of Surendra Kumar Kuer of village-Hariharpur. There was no issue from the said wedlock of Phulmati Devi, so the petitioners along with other accused persons started torturing her and even stopped her meal and ousted her from matrimonial house several times. The complainant further alleged that on 22.05.1999, *bidai* was performed and deceased, namely, Phulmati Devi came to her *sasural* but, the petitioners along with other accused persons committed her murder and concealed her dead body. On 26.05.1999, he received the aforesaid information and



reached at matrimonial house of her niece but, the petitioners/accused persons have not given any satisfactory reply.

4. With aforesaid allegation, a Complaint Case No.1021 of 1999 was filed before the court of learned Chief Judicial Magistrate, Chapra, which was sent to the police by exercising powers under Section 156(3) of the Code of Criminal Procedure (for short 'CrPC') for lodging the FIR and investigation of the case, where after the investigation, the police submitted final form exonerating the petitioners, but the learned Trial Court by differing with the finding of exoneration, vide order dated 07.05.2002 took cognizance against the petitioners for the offence punishable under Sections 304-B and 201 read with 34 of the IPC.

5. It is submitted by learned counsel appearing for the petitioners that admittedly as per the complaint petition, which is the basis of present police case, the marriage of deceased with co-accused/husband, namely Ganesh Ojha was solemnized in the year 1988, where the alleged occurrence took place in the year 1999 and, as such, legally,



the order taking cognizance for the offence under Sections 304-B of the IPC is apparently illegal on its face. It is further submitted by learned counsel that petitioner nos. 1 and 2 are in-laws, whereas petitioner no.3 is cousin in-laws and allegation against them are very much general and omnibus and having same allegation, the impugned order taking cognizance *qua* co-accused, namely, Surendra Ojha @ Surendra Kumar Sharma was quashed by one of the learned co-ordinate Bench of this Court vide judgment dated 28.09.2015 through Cr. Misc. No.339 of 2013. While concluding argument, learned counsel has relied upon the legal report of Hon'ble Supreme Court decided in the case of **State of Haryana vs. Bhajan Lal** reported in **1992 Supp (1) SCC 335**.

6. The notice has been validly served upon opposite party no.2 but, no one turned up.

7. Learned APP while opposing the application fairly submitted that the allegation against the petitioners is general and omnibus and same is on par of co-accused, Surendra Ojha against whom the impugned cognizance order has already been quashed through Cr. Misc. No.339 of 2013



dated 28.09.2015, by taking note of all the relevant paragraphs of the case diary, which were relied upon by learned jurisdictional Magistrate through impugned order for taking cognizance against the petitioners.

8. It would be apposite to reproduce para-102 of the legal report of Hon'ble Supreme Court passed in the matter of **Bhajan Lal case (supra)**, which is 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 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.”

9. In view of aforesaid factual and legal submissions and by taking note of fact that FIR itself disclosed that the occurrence took place after eleven years of marriage, where petitioners are in-laws and living separately, facing very much general and omnibus allegation, coupled with the fact that cognizance order *qua* similarly situated co-accused, namely, Surendra Ojha has already been quashed by learned co-ordinate Bench of this Court and also taking note of **Bhajan Lal Case (supra)**, the impugned order dated 02.12.2010 passed by learned



1st Additional Sessions Judge, Saran at Chapra in Criminal Revision No.300 of 2003/34A of 2004 by which it has confirmed the order taking cognizance dated 07.05.2002 passed by the learned Chief Judicial Magistrate, Saran at Chapra in Baniapur P.S. Case No.116 of 1999, (U.T. No.858 of 2003) with all its consequential proceedings *qua* petitioners are, hereby, quashed and set aside.

10. The application stands allowed.

11. Let a copy of the judgment be communicated to the learned Trial Court forthwith.

(Chandra Shekhar Jha, J.)

Sanjeet/-

AFR/NAFR	NAFR
CAV DATE	NA
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