

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.49450 of 2017

Arising Out of PS. Case No.-98 Year-2015 Thana- HATHAURI District- Samastipur

Shaishabh Chaudhary @ Shaishav Prasad Choudhary, S/o Shri Shashi Kant Chaudhary, R/o Village- Parwana, P.S.- Hathauri, District- Samastipur.

... .. Petitioner

Versus

1. The State of Bihar
2. Anita Chaudhary, W/o Shaishav Prasad Chaudhary, R/o Village- Parwana, P.S.-Hathauri, (Shivaji Nagar), District- Samastipur, presently residing at Mohalla- Adarsh Nagar, P.S.- Samastipur Mufassil, District- Samastipur.

... .. Opposite Parties

Appearance :

For the Petitioner/s	:	Mr. Sanjay Kumar, Advocate Utkarshni Jamuar, Advocate
For the Opposite Party/s :		Mr. Ram Anurag Singh, APP

CORAM: HONOURABLE MR. JUSTICE CHANDRA SHEKHAR JHA
ORAL JUDGMENT

Date : 13-05-2024

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

2. The present application has been filed by the petitioner for quashing of the order dated 01.05.2017 passed by learned Additional Chief Judicial Magistrate No.-II, Rosera, Samastipur in Hathauri (Shivajee Nagar) P.S. Case No.98 of 2015, whereby the learned Jurisdictional Magistrate has taken cognizance for the offences punishable under Sections 341, 323, 498-A and 504 read with 34 of the Indian Penal Code (for short 'IPC').



3. The case of the prosecution is based upon the written report of the informant/opposite party no.2, namely, Anita Chaudhary stating therein that mother-in-law, father-in-law and husband abused, tortured and assaulted her. She further alleged that in this regard, a case is also pending in Rosera court. It further alleged by opposite party no.2 that on 18.11.2015 her in-laws along with husband and sautan (2nd wife of petitioner) assaulted her and ousted from the house.

4. With the aforesaid background of allegation, Hathauri (Shivajee Nagar) P.S. Case No.98 of 2015 was lodged for the offences punishable under Sections 341, 323, 504 and 498-A of the IPC, where after investigation, charge-sheet was submitted against the petitioner for the aforesaid offences. The learned Trial Court on perusal of record and materials collected during investigation, took cognizance vide impugned order dated 01.05.2017 for the offence punishable under Sections 341, 323, 498-A and 504 read with 34 of the IPC against the petitioner and other co-accused persons.



5. It is submitted by learned counsel that prior to lodging of the present case, the opposite party no.2 also lodged a case against petitioner/husband, which was lodged as Samastipur Town (M) P.S. Case No.23 of 2008 dated 18.01.2008 for the offences punishable under Sections 498-A, 323, 307 and 494 read with 34 of the IPC. It is pointed out that in aforesaid case, after trial, the petitioner/husband was acquitted through Sessions Trial No.325 of 2010 dated 06.05.2011 as passed by learned Additional Sessions Judge, F.T.C.-I, Samastipur. It is submitted that opposite party no.2 never lived together with petitioner/husband and for no reason, the present case was lodged by opposite party no.2 on 20.11.2015 almost on similar allegation. It is submitted that prior to the lodging of the present case, the petitioner has filed divorce petition on 25.11.2013 before the Principal Judge, Family Court, Samastipur, where the petitioner succeeded to get divorce from opposite party no.2 through Divorce Case No.317 of 2013 dated 31.05.2019. It is submitted that the entire dispute now settled, as through same divorce case, the permanent alimony of Rs. 5 lakhs



was directed by the learned Trial Court itself to opposite party/wife and her daughter. It is further pointed out that in furtherance of the direction passed in aforesaid divorce case, the petitioner has paid permanent alimony to opposite party no.2/wife and daughter. It is also pointed out by learned counsel that the conduct of opposite party no.2 as to harass petitioner can be gathered easily as the present case was filed on third occasion for almost same allegation in the year 2015, which was registered as Hathauri P.S. Case No. 98 of 2015 almost after one year of filing of divorce petition.

6. While concluding argument, it is pointed out that now in view of aforesaid backgrounds when almost all the disputes between the parties now appears settled with the interference of the Court, continuing with present proceedings before the learned Trial Court would only amounting to abuse of the process of court of law. In support of his submission, learned counsel relied upon the legal report of Hon'ble Supreme Court as passed in the case of **Abhishek vs. State of Madhya Pradesh [2023 SCC OnLine Sc 1083]**.



7. Despite of service of notice, opposite party no.2 has failed to join the present proceeding.

8. Learned APP for the State while opposing the petition submitted that the petitioner/husband along with family members having direct involvement in alleged cruelty as raised through FIR.

9. It would be apposite to reproduce para 13-17 of the legal report of Hon'ble Supreme Court passed in the matter of **Abhishek case** (supra), which runs as under:-

"13. Instances of a husband's family members filing a petition to quash criminal proceedings launched against them by his wife in the midst of matrimonial disputes are neither a rarity nor of recent origin. Precedents aplenty abound on this score. We may now take note of some decisions of particular relevance. Recently, in *Kahkashan Kausar alias Sonam v. State of Bihar* [(2022) 6 SCC 599], this Court had occasion to deal with a similar situation where the High Court had refused to quash a FIR registered for various offences, including Section 498A IPC. Noting that the foremost issue that required determination was whether allegations made against the in-laws were general omnibus allegations which would be liable to be quashed, this Court referred to earlier decisions wherein concern was expressed over the misuse of Section 498A IPC and the increased tendency to implicate relatives of the husband in matrimonial disputes. This Court observed that false implications by way of general omnibus allegations made in the course of matrimonial disputes, if left unchecked, would result in misuse of the process of law. On the facts of that case, it was found that no specific allegations were made against the in-laws by the wife and it was held that allowing their prosecution in the absence of clear allegations against the in-laws would result in an abuse



of the process of law. It was also noted that a criminal trial, leading to an eventual acquittal, would inflict severe scars upon the accused and such an exercise ought to be discouraged.

14. In *Preeti Gupta v. State of Jharkhand* [(2010) 7 SCC 667], this Court noted that the tendency to implicate the husband and all his immediate relations is also not uncommon in complaints filed under Section 498A IPC. It was observed that the Courts have to be extremely careful and cautious in dealing with these complaints and must take pragmatic realities into consideration while dealing with matrimonial cases, as allegations of harassment by husband's close relations, who were living in different cities and never visited or rarely visited the place where the complainant resided, would add an entirely different complexion and such allegations would have to be scrutinised with great care and circumspection.

15. Earlier, in *Neelu Chopra v. Bharti* [(2009) 10 SCC 184], this Court observed that the mere mention of statutory provisions and the language thereof, for lodging a complaint, is not the 'be all and end all' of the matter, as what is required to be brought to the notice of the Court is the particulars of the offence committed by each and every accused and the role played by each and every accused in the commission of that offence. These observations were made in the context of a matrimonial dispute involving Section 498A IPC.

16. Of more recent origin is the decision of this Court in *Mahmood Ali v. State of U.P. (Criminal Appeal No. 2341 of 2023, decided on 08.08.2023)* on the legal principles applicable apropos Section 482 Cr. P.C. Therein, it was observed that when an accused comes before the High Court, invoking either the inherent power under Section 482 Cr. P.C. or the extraordinary jurisdiction under Article 226 of the Constitution, to get the FIR or the criminal proceedings quashed, essentially on the ground that such proceedings are manifestly frivolous or vexatious or instituted with the ulterior motive of wreaking vengeance, then in such circumstances, the High Court owes a duty to look into the FIR with care and a little more closely. It was further observed that it will not be enough for the Court to look into the averments made in the FIR/complaint alone for the purpose of ascertaining whether the necessary ingredients to constitute the alleged offence are



disclosed or not as, in frivolous or vexatious proceedings, the Court owes a duty to look into many other attending circumstances emerging from the record of the case over and above the averments and, if need be, with due care and circumspection, to try and read between the lines.

17. In State of Haryana and Ors. Vs. Bhajan Lal and Ors [(1992) Supp (1) SCC 335], this Court had set out, by way of illustration, the broad categories of cases in which the inherent power under Section 482 Cr. P.C. could be exercised. Para 102 of the decision reads as follows:

'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."

10. In view of aforesaid factual and legal submissions, it appears that opposite party no.2 is habitual in filing of criminal case almost on similar ground starting from the year 2008 till 2015, where, Samastipur Town (M) P.S. Case No.23 of 2008 was filed on first occasion, where petitioner and his family members were acquitted and



secondly, Hathauri P.S. Case No.100 of 2013 was filed by opposite party no.2 and almost on same allegation, on third occasion present case, i.e. Hathauri P.S. Case No.98 of 2015 was filed by opposite party no.2. It further appears that now the marriage between the parties stand dissolved, which was not challenged before any higher forum and it attained finality. The permanent alimony as decided by the Family Court i.e. Rs.5 lakhs to opposite party no.2 and Rs. 5 lakhs to her daughter was also paid by petitioner and, as such, there is no issue of maintenance is pending between the parties.

11. Considering the aforesaid facts and by taking guiding note of **Abhishek Case** (supra), it appears that continuing with the proceedings before the learned trial court would only amount to abuse of the process of the court of law. Accordingly, the impugned order dated 01.05.2017 passed by learned Additional Chief Judicial Magistrate No.-II, Rosera, in Hathauri (Shivajee Nagar) P.S. Case No.98 of 2015 with all its consequential proceedings *qua* petitioner is, hereby, quashed and set



aside.

12. The application stands allowed.

13. 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
Uploading Date	18.05.2024
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