

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.34417 of 2015

Arising Out of PS. Case No.-1104 Year-2014 Thana- KHAGARIA COMPALINT CASE
District- Khagaria

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1. Bhawanand Mishra @ Dilip Mishra Son of Late Chandranand Mishra @ Kailu Mishra,
 2. Sidhyanand Mishra, S/o Late Chandranand Mishra @ Kailu Mishra,
 3. Bandana Devi @ Bandana Mishra W/o BhawanandMishra @ Dilip Mishra,
 4. Bindwasini Devi, W/o Late Chandranand Mishra @ Kailu Mishra, null
 5. Lalanand Mishra, S/o Late Chandranand Mishra @ Kailu Mishra,
 6. Soni Devi @ Soni Mishra, W/o Lalanand Mishra, All resident of Kharaiya Basti, Ward No. 13, P.S. and District - Araria.

... .. Petitioner/s

Versus

1. State of Bihar
2. Rambha Devi, W/o Late Vidhyanand Mishra, Resident of Village -Kharaiya Basti, Ward No. 13, P.S. and District - Araria At present Rambha Devi, D/o Late Mohan Mishra, Resident of B.K.P., 16 B, South Railway Coloney, P.S. and District -Khagaria.

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr.Anil Prasad Singh
For the Opposite Party/s : Mr.Vinod Shankar Modiapp

CORAM: HONOURABLE MR. JUSTICE CHANDRA SHEKHAR JHA
ORAL JUDGMENT

Date : 15-02-2024

Heard the parties.

2. The present application has been filed for quashing of the order dated 08.12.2014 passed by the learned S.D.J.M., Khagaria arising out of Complaint Case No. 1104(C) of 2014 whereby and whereunder the learned court was pleased to take cognizance for the offence under Section 498A of the Indian Penal Code (in short I.P.C.) and also under Section 3 and 4 of the Dowry Prohibition Act.



3. From the crux of the compliant petition, which is filed on 25.09.2014, before the learned trial court, it appears that marriage of opposite party no. 2 was solemnized on 10.03.2003 with son of the petitioner no. 4 namely, late Vidhyanath Mishra as per Hindu Rights and Rituals.

4. As per the narration of complaint case, it appears that the demand of dowry started to raise from year 2006 itself for which a complaint case was lodged in the year 2011, where husband of the complainant was also arrayed as a party, which is still pending before trial court. It appears that in the year 2013, the husband of the opposite party no. 2 died due to illness and, thereafter, in the year 2014, the present complaint case was filed by opposite party no. 2 against the petitioners alleging for demand of a motorcycle only.

5. It is submitted by learned counsel appearing on behalf of the petitioners that the present complaint case was lodged only with a view to settle the family partitions by creating legal pressures, where petitioner no. 1, 2 and 5 are brothers-in-law, whereas petitioner no. 3 and 6 are sisters-in-law and petitioner no. 4 is mother in law. It is submitted that the complaint which filed in the year 2011 was compromised but, due to death of husband of opposite party no. 2, same was not



finally disposed before the court of law. It is submitted that demand of Rs. 35,000/- as raised through earlier compliant petition appears to be seized in the present complaint petition where demand is specifically made regarding motorcycle only. It is submitted that both sons of opposite party no. 2 are now living separately with share of his late father/the husband of opposite party no. 2. It is further submitted that *Jamabandi* of homestead land also created in favour of both sons of opposite party no. 2, namely Kanhaiya Kumar Mishra and Raja Kumar Mishra. It is pointed out that for the partition of remaining agricultural land, present false and malicious prosecution was lodged by opposite party no. 2.

6. It is submitted by learned counsel appearing on behalf of the complainant/opposite party no. 2 that the opposite party no. 2 dispossessed from the property belongs to the share of her husband. It is submitted that when she visited her in-laws home, she was assaulted and she was treated at Sadar Hospital, Araria on 03.09.2014, thereafter, she was referred to Sadar Hospital, Purnea, where she was treated on 07.09.2014 and further thereafter she went to Khagaria, where she was under treatment of private doctor when present complaint was lodged.



7. It would be apposite in this context to reproduce para 102 of the judgment of Hon'ble Supreme Court rendered in the case of ***State of Haryana v. Bhajan Lal***, reported in 1992 ***Supp (1) SCC 335***:-

“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 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.”

8. Taking note of the version of complaint petition dated 25.09.2014 on its face and also by considering the submissions as advanced by learned counsels appearing on behalf of the parties, it appears *prima facie* that core issue is the partition dispute related with the ancestral properties, where the



present case was only appears to create legal pressure. It appears non-convincing that the family members immediately after the death of husband of opposite party no. 2 will raise a demand for motorcycle after fourteen years of marriage. The demand of cash as raised in earlier complaint of year 2011 also appears to seize in the present complaint petition. The narration and fact of the complaint petition indicating the present prosecution as a malicious prosecution with ulterior motive and, therefore, the order of cognizance dated 08.12.2014 passed by the learned S.D.J.M., Khagaria arising out of Complaint Case No. 1104(C) of 2014 in Compliant Case No. 1104(C) of 2014 with all its consequential proceeding is hereby quashed and set aside.

9. Accordingly, present petition stands allowed.

10. It is made clear that this order is of no bearing over pending compliant case No. 925(C) of 2011, as same is not under challenge with present petition.

(Chandra Shekhar Jha, J)

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