

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.32745 of 2016

Arising Out of PS. Case No.-1754 Year-2010 Thana- SIWAN COMPLAINT CASE District-
Siwan

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Md. Habib Wali and Ors

... .. Petitioner/s

Versus

State Of Bihar and Anr

... .. Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Rajesh Kumar Mishra, Advocate
For the Opposite Party/s : Sri Nand Kumar, APP

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CORAM: HONOURABLE MR. JUSTICE CHANDRA SHEKHAR JHA
ORAL ORDER

15 23-02-2024

1. Heard learned counsel for the petitioners and
learned counsel for the respondents.

2. The present quashing petition has been preferred
against the order dated 04.12.2010 passed in Complaint Case
No. 1754 of 2010, where learned Sub Divisional Judicial
Magistrate, Siwan took cognizance for the offences punishable
under sections 313, 506 and 34 of the Indian
Penal Code against the petitioners.

3. The complainant/Opposite Party No. 2, fails to
join the present proceedings.

4. From the crux of complaint petition it appears
that a complaint case before the Court of Learned Chief Judicial
Magistrate, Siwan was lodged stating therein that marriage of
her son was solemnized with one Aliya Raushan on 25.03.2009.



After marriage her daughter-in-law came to her house to lead her conjugal life. In year 2009, she became pregnant, whereafter her regular medical checkup was started in which Dr. Shyama Sharma, advised her to take care of herself. On 08.07.2009 accused no. 1, 4 and 5 came to her house and informed her about settlement of cousin's marriage. The accused persons showed their willingness to take her daughter-in-law with them. In their pressure, complainant allowed her daughter-in-law to go with them. Her daughter-in-law went to her parental home, with all her ornaments. After some time on occasion of Eid, her younger son went Ranchi and found that pregnancy of her daughter-in-law who forcibly terminated by accused persons. Several attempts were made by them to bring back her daughter-in-law but she did not come. Ultimately this complaint case has been filed.

5. It is submitted that aforesaid complaint was brought only with ulterior motive for wrecking vengeance. It is submitted that the daughter of petitioner no. 1 namely Aliya Raushan, is the daughter-in-law of the opposite party, who alongwith family members started raising demand of dowry for Rs. 3,00,000/- and due to non-fulfillment of the same started torturing the daughter of petitioner no. 1. As to pacify the



matter, petitioner no. 1 visited in-laws family of her daughter that is the house of O.P. No. 2 and ultimately with consent *bidai* was performed on 09.07.2004 for Ranchi, for parental house of the Aliya Raushan, where during medical checkup physical assault was noticed upon her causing her miscarriage. Consequent upon on 16.09.2009 the daughter of petitioner no. 1 lodged a Complaint Case No. 1850 of 2009 before learned Chief Judicial Magistrate, Ranchi, where learned CJM Ranchi took cognizance under Section 498A of the IPC alongwith Section 3/4 of the Dowry Prohibition Act.

6. It is further submitted that complaint case as aforesaid lodged by the daughter of petitioner no. 1, was finally compromised with O.P. No. 2 and family members, where finally the marriage of daughter of petitioner no. 1 with son of O.P. No. 2 dissolved by way of divorce.

7. It is submitted that during pendency of aforesaid complaint petition at Ranchi, lodged by daughter of petitioner no. 1, the present complaint case was filed before learned CJM, Siwan, where the main allegation was raised against petitioner being parents caused termination of pregnancy of daughter-in-law of O.P. No. 2 without her consent.

8. Out of submission it was raised by learned



counsel that the best witness for medical termination of pregnancy (MTP) as it appears from the narration of complaint petition would be Aliya Raushan i.e., daughter-in-law of O.P. No. 2/daughter of petitioner no. 1 but the complaint was not brought by her against petitioners neither she was examined as a witness in present complaint. There is no medical document in support of allegation of MTP. The allegation of termination of pregnancy as raised through present complaint petition, was filed in year 2010, just to counter the actual complaint filed by Aliya Raushan, daughter of petitioner no. 1 against O.P. No. 2 and family members. It is also submitted that as matter has been amicably settled between the parties, where marriage duly dissolved after divorce, continuance of present proceeding would only amount abusing process of law.

9. 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 nay 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.”

10. In view of aforesaid factual and legal submissions as discussed above it appears that present complaint petition was lodged by O.P. No. 2/mother-in-law, for terminating pregnancy of her daughter-in-law alleging petitioners, who are father and brother, during the pendency of Complaint Case No. 1850 of 2009 filed before learned Chief Judicial Magistrate, Ranchi, raising similar allegation, which was filed by daughter of petitioner no. 1/daughter-in-law of O.P. No. 2 against O.P. No. 2 and family members. Matter appears compromised, where parties dissolved their marriage by way of divorce. The present complaint petition, *prima facie*, appears to be filed with an ulterior motive for wrecking vengeance on the petitioners with a view to spite them for private and personnel grudge. The fact of this case is squarely covered by the guideline no. 7 of **Bhajan Lal (supra)**, accordingly impugned order dated 04.12.2010 and all its consequential proceeding



arising thereof as passed in Complaint Case No. 1754 of 2010,
pending before learned Sub Divisional Judicial Magistrate,
Siwan is hereby quashed and set aside.

11. The application stands allowed.

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

(Chandra Shekhar Jha, J.)

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