

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.47734 of 2019

Arising Out of PS. Case No.-33 Year-2016 Thana- PIRBAHOR District- Patna

-
1. Shabina Azhar, W/o Firoz Anwar
 2. Sabiha Azhar, W/o Shams Tabrez
 3. Tanweer Nasar @ Md. Tanweer Nasar, Son of Late Abu Azhar
 4. Jamila Khatoon, Wife of Late Abu Azhar
- All above-named petitioners are resident of Mohalla-Shibli Colony, New Karimganj, P.S.-Civil Line, District-Gaya.
5. Reshma Perween, W/o Adil Hussain @ Md. Adil Hassan
 6. Adil Hussain @ Md. Adil Hassan, Son of Md. Nazim
- Both are resident of Mohalla-Durgabadi, Sharif Manzil, P.S.-Civil Line, District-Gaya.

... .. Petitioners

Versus

1. The State of Bihar
2. Firoz Anwar, Son of Late Md. Anwarul Haque, Resident of Anwar House, Moharrampur, Near Mosque, Bakarganj, P.S.-Pirbahore, District-Patna.

... .. Opposite Parties

Appearance :

For the Petitioner/s : Mr. Ashhar Mustafa, Advocate
For the Opposite Party/s : Ms. Gulnar Begum, APP

CORAM: HONOURABLE MR. JUSTICE CHANDRA SHEKHAR JHA
ORAL JUDGMENT
Date : 06-05-2024

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

2. The present application has been filed by the
petitioners for quashing of the order of cognizance dated
20.09.2018 passed by learned Chief Judicial Magistrate,
Patna in G.R. No.773 of 2016 arising out of Pirbahore P.S.



Case No.33 of 2016, whereby the learned Jurisdictional Magistrate has taken cognizance for the offences punishable under Sections 341, 323, 504, 506 and 500 read with 34 of the Indian Penal Code (for short 'IPC').

3. The case of the prosecution, in brief, is that the opposite party no.2, namely, Firoz Anwar entered into marriage with Sabina Azhar, daughter of Late Abu Azhar on 03.06.2011 as per Muslim rites and rituals. The factum of 75% vision handicapness was well known to her at the time of marriage. At the relevant time, the wife of complainant was posted as Librarian at Central School, Jawahar Nagar, Sutihara, Sitamarhi. It was further alleged that no sooner the marriage was performed, petitioner no.1, namely, Shabina Azhar refused to acknowledge opposite party no.2 as her husband. Petitioner no.1 started addressing opposite party no.2 as blind and in connivance with other family members, petitioner no.1 attempted to get his ancestral property transferred in her name. Thereafter, petitioner no.1 forced the opposite party no.2 to sign few blank papers. It was further alleged that in order to resolve the issues, a



written compromise was executed between the parties on 14.06.2012. However, petitioner no.1 did not mend her ways. Being dis-illusioned by the continued misbehaviour of his wife, petitioner no.4, namely, Jamila Khatoon, sister Sabiha Azhar (petitioner no.2), brother Tanveer Nasar (petitioner no.3), cousin Reshma Perween (petitioner no.5) and brother-in-law, Adil Hussain @ Md. Adil Hassan (petitioner no.6), opposite party no.2 pronounced first *Talak* on 08.10.2014, second on 09.12.2014 and third on 21.04.2015, which was duly communicated in writing and received on 27.04.2015. It was further alleged by opposite party no.2 that after first pronouncement, all the above-named petitioners along with others mocked his handicapness and even assaulted him. He was even threatened of murder. After third and last pronouncement, on 31.05.2015, her brother Tanveer Nasar (petitioner no.3), cousin Reshma Praveen and two others slapped him and even threatened to kill. The opposite party no.2 was again threatened by the petitioners that he will be killed in a planned manner, showing his death as accident.



4. In the background of aforesaid allegation, a formal FIR was registered in this matter, which was registered as Pirbahore P.S. Case No.33 of 2016 on 03.01.2016, where after the investigation, the police submitted charge-sheet on 31.08.2018 bearing Charge-sheet No.268 of 2018.

5. The learned Chief Judicial Magistrate, Patna after perusal of materials collected during the course of investigation, vide impugned order dated 20.09.2018, took cognizance for the offences punishable under Sections 341, 323, 504, 506 and 500 read with 34 of the IPC.

6. It is submitted by learned counsel appearing for the petitioners that the present criminal case was registered against the petitioners as a measure of retaliation of Complaint Case No.916 of 2015, which was filed before the learned Chief Judicial Magistrate, Gaya, where the cognizance was taken for the offences punishable under Section 498-A of the IPC and Section 4 of the Dowry Prohibition Act, which was filed by petitioner no.1, being wife of opposite party no.2. It is pointed out that just before



couple of days of summoning order in aforesaid criminal case, as filed by petitioner no.1, the present case was lodged by opposite party no.2/husband. It is pointed out that it is hard to believe by any prudent imagination that the wife along with male and female family members of her parental home will come all along to Patna from Gaya and after entering into the house assaulted the husband and his family members with smooth exit from there. It is submitted that the present petition was filed only with harassing attitude out of oblique and ulterior motive purely upon imaginary ground and, as such, the cognizance order is fit to quashed and set aside. In support of his submission, learned counsel referred to the legal report of Hon'ble Supreme Court as passed in the matter of **State of Haryana and Ors. Vs. Bhajan Lal and Ors. [(1992) Supp (1) SCC 335]**.

7. Learned advocate appearing for opposite party no.2 fails to join the present proceeding.

8. It would be apposite to reproduce paragraph '102' of the legal report of Hon'ble Supreme Court in the case of **Bhajan Lal** (supra), which is being reproduced



hereunder for a ready reference:

“**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, it appears that petitioner no.1 is the wife of opposite party no.2 against whom a complaint case was lodged by petitioner no.1 before the court of learned Chief Judicial Magistrate, Gaya, where the learned Trial Court took cognizance for the offence punishable under Section 498-A of the IPC and Section 4 of the Dowry Prohibition Act. It appears that to counter the case, which was lodged at Gaya by wife of opposite party no.2, the present case against family members of wife was lodged by opposite party no.2 as a retaliatory measure. It further appears that the case of petitioners are covered under guideline nos. (1) and (7) of the legal report of **Bhajan Lal case (supra)** as mentioned above.

10. Accordingly, the impugned order of cognizance dated 20.09.2018 passed by learned Chief Judicial Magistrate, Patna in G.R. No.773 of 2016 arising out of Pirbahore P.S. Case No.33 of 2016 with all its consequential proceedings *qua* petitioners is hereby quashed and set aside.



11. The application stands allowed.

12. 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	09.05.2024
Transmission Date	09.05.2024

