

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.16984 of 2016

Arising Out of PS. Case No.-149 Year-2002 Thana- SAHARSA COMPLAINT CASE
District- Saharsa

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1. Birendra Sah
 2. Narendra Sah both son of Chaturbhuj Sah
 3. Anita Devi
 4. Sarita Devi @ Sunita Devi
 5. Babita Kumar @ Babita Devi all married daughter of Chaturbhuj Sah,
 6. Sumitra Devi wife of Chaturbhuj Sah. All resident of village Gamahariya Bazar, P.S.- Gamahariya, District- Madhepura

... .. Petitioner/s

Versus

1. State of Bihar
2. Vidyanand Sah @ Bidhyanand Sah S/o Late Jagdeo Sah resident of Tola Garh Bazar, Khajuraha, P.S.- Sonbarsa District- Saharsa

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr. Diwakar Prasad Singh, Advocate Mr. Om Prakash Singh, Advocate Mr. Amardeep Lokpriya, Advocate
For the Opposite Party/s	:	Mr. Subesh Sharma, Advocate
For the State	:	Mr Nand Kishore Prasad APP

CORAM: HONOURABLE MR. JUSTICE CHANDRA SHEKHAR JHA
ORAL JUDGMENT

Date : 28-03-2024

1. This application preferred for quashing the order dated 16.06.15 Passed by learned Judicial Magistrate 1st Class at Saharsa in Complaint Case No 149 C of 2002 by which discharge application filed by the petitioners was rejected by learned trial court.

2. The basis of the case is a complaint



petition No.149 of 2002 filed by one Bidhyanand Sah in the court of learned Chief Judicial Magistrate, Saharsa. It is alleged in the complaint petition that daughter of the complainant, namely, Runa Devi was married with Surendra Sah in the night of 18.03.1997 as per Hindu Rites solemnized by Sri Madan Jha Priest & Bidyanand Thakur barber. It was stated that daughter of the complainant went to her matrimonial home Gamahriya Bazar after third day of the marriage along with her husband Surendra Sah & his brother & accused No.2 Birendra Sah. It was alleged that the complainant gifted cloths, jewelleryes including ear ring, Tika, Payal, boxes as well as utensils of Rs. 25,000/-. It was stated that after departure of her daughter the accused persons started demanding Cow, Buffalo, Motorcycle & Television. It was alleged that son of the complainant had gone to Gamahariya Market where the accused persons told him that he will not keep the daughter of the complainant unless they supply the articles as



aforesaid. It was further alleged that the accused persons started harassing the daughter of the complainant. Subsequently the complainant went to Gamahariya Market and tried to inculcate the daughter, son-in-law & his brother, sisters & mothers and assured that he will manage to give a cow anyhow but he will not give other things. The accused persons told the complainant to come with a cow, as such Rs.5000/ were given for purchasing a Cow. It was further alleged that daughter of the complainant requested the complainant to take her back home otherwise they will burn her alive. It was stated that the complainant returned with his daughter. Thereafter the son-in-law of the complainant stopped visiting his home and the accused persons sent several messages that in case they will not give Television & Motor cycle then they will marry with another woman. It was alleged that the villagers of the complainant went to Gamahariya Market and asked petitioners as why they are not keeping daughter of the



complainant, and how long they will maintain their daughter. It was alleged that on 25.02.2002, the accused No.1, 2 & 3 came to the house of the complainant and asked to give the buffalo as dowry, available in his cowshed. The complainant left with no option supplied the buffalo, cloths & sweets too and sent her daughter to her matrimonial home. It was alleged that on 02.03.2002 the daughter of the complainant and son of the accused persons came weeping from Gamahariya Market and told that the accused persons were harassing her and using like a maid servant and not giving proper support. It was further alleged that all the accused persons demanded Television & Motor cycle and also snatched the apparels given by the complainant. It was further stated that in the night of 01.03.02 the accused persons tried to sprinkle the Kerosene oil to burn her alive but the complainant woke up and raised alarm to save her and fled away and returned back to her home. It was alleged that son of the complainant



told that Runa Devi can not live in Gamahariya Market in present circumstances as his bother-in-law Surendra Sah has solemnized another marriage with one Rita Devi daughter of Sri Mahendra Sah. It was further alleged that the complainant went to Gamahariya Market for enquiry & convened a Panchayat, but the order of the Panchayat was not accepted as such they came to register complaint.

3. Learned counsel appearing for the petitioners submitted that initially the order of cognizance was challenged before this court through Cr. Misc. No. 9573 of 2014, wherein the issue of territorial jurisdiction was raised as the entire occurrence took place in District- Madhepura, whereas the present complaint was filed in District- Saharsa. It is submitted that as the ground of territorial jurisdiction was not raised before the learned trial court itself, therefore, vide order dated 26.02.2014, while disposing the present matter, it was directed to learned trial court to decide the



issue of territorial jurisdictions, whereafter through impugned order learned trial court affirmed the jurisdiction of District- Saharsa, being continuing offence as the victim of this case was at her parental home at the time of lodging complaint, which falls under District- Saharsa. It is submitted that the said finding of learned trial court is bad in the eyes of law as no such occurrence took place in District- Saharsa. While travelling over the argument, learned counsel submitted that this is one aspect of the case, which is more technical, beside that main aspects of this case is that all petitioners are in-laws against whom the allegation is appearing, *prima facie*, very much general and omnibus. It is submitted that petitioner no. 6 namely Sumitra Devi died during the course of pendency of present application, whereas petitioner nos. 1 & 2 are elder brothers of the husband of daughter of O.P. No. 2 and petitioner nos. 3, 4 & 5 are married sisters, who are living separately much prior to the occurrence and



having no connection with the daily and domestic affairs with the daughter of O.P. No. 2 and her husband. It is submitted that implication of petitioners appears only being in-laws and family members without having any specific allegation and as such the present proceeding is fit to be quashed and set aside.

4. In support of his submissions, learned counsel relied upon the legal reports of the Hon'ble Supreme Court as reported in the matters of **State of Haryana and Others vs. Bhajan Lal and Others** reported in **1992 Supp (1) SCC 335**, **Arnesh Kumar Vs. State of Bihar and Another** reported in **(2014) 8 SCC 273**, **Kahkashan Kausar @ Sonam and Others vs. State of Bihar and Others** reported in **(2022) 6 SCC 599** and **Abhishek vs. State of Madhya Pradesh** reported in **2023 SCC OnLine SC 1083**.

5. Learned APP duly assisted by learned counsel Mr. Subesh Sharma appearing for O.P. No. 2 while opposing the application submitted that petitioners



being in-laws actively participated in the occurrence. It is submitted that the husband of daughter of O.P. No. 2 solemnized his second marriage with one Rita Devi. It is submitted that as far finding of territorial jurisdiction is concerned, same appears not required to interfere, as it is amounting to continuing offence in view of provisions as laid down under Section 178(c) of Code of Criminal Procedure (in short "Cr.P.C.").

6. In support of his submissions regarding territorial jurisdiction, learned counsel also relied upon the legal report of the Hon'ble Supreme Court as reported in the matter of **Rupali Devi vs. State of Uttar Pradesh** reported in **2019 SCC OnLine SC 493**. Learned counsel further relied upon the legal report of the Hon'ble Supreme Court as reported in the matter of **State of Madhya Pradesh vs. Suresh Kaushal and Another** reported in **(2003) 11 SCC 126**.

7. It would be apposite to reproduce relevant Paragraph Nos. 13 & 14 of **Kahkashan Kausar Case**



(supra), which reads as:-

13. Previously, in the landmark judgment of this Court in *Arnesh Kumar v. State of Bihar* [*Arnesh Kumar v. State of Bihar*, (2014) 8 SCC 273 : (2014) 3 SCC (Cri) 449] , it was also observed : (SCC p. 276, para 4)

“4. There is a phenomenal increase in matrimonial disputes in recent years. The institution of marriage is greatly revered in this country. Section 498-AIPC was introduced with avowed object to combat the menace of harassment to a woman at the hands of her husband and his relatives. The fact that Section 498-AIPC is a cognizable and non-bailable offence has lent it a dubious place of pride amongst the provisions that are used as weapons rather than shield by disgruntled wives. The simplest way to harass is to get the husband and his relatives arrested under this provision. In quite a number of cases, bedridden grandfathers and grandmothers of the husbands, their sisters living abroad for decades are arrested.”

14. Further in *Preeti Gupta v. State of Jharkhand* [*Preeti Gupta v. State of Jharkhand*, (2010) 7 SCC 667 : (2010) 3 SCC (Cri) 473] , it has also been observed : (SCC pp. 676-77, paras 32-36)

“32. It is a matter of common experience that most of these complaints under Section 498-AIPC are filed in the heat of the moment over trivial issues without proper deliberations. We come across a large number of such complaints which are not even bona fide and are filed with oblique



motive. At the same time, rapid increase in the number of genuine cases of dowry harassment is also a matter of serious concern.

33. The learned members of the Bar have enormous social responsibility and obligation to ensure that the social fibre of family life is not ruined or demolished. They must ensure that exaggerated versions of small incidents should not be reflected in the criminal complaints. Majority of the complaints are filed either on their advice or with their concurrence. The learned members of the Bar who belong to a noble profession must maintain its noble traditions and should treat every complaint under Section 498-A as a basic human problem and must make serious endeavour to help the parties in arriving at an amicable resolution of that human problem. They must discharge their duties to the best of their abilities to ensure that social fibre, peace and tranquillity of the society remains intact. The members of the Bar should also ensure that one complaint should not lead to multiple cases.

34. Unfortunately, at the time of filing of the complaint the implications and consequences are not properly visualised by the complainant that such complaint can lead to insurmountable harassment, agony and pain to the complainant, accused and his close relations.

35. The ultimate object of justice is to find out the truth and punish the guilty and protect the innocent. To find out the truth is a Herculean task in majority of these complaints. The tendency of



implicating the husband and all his immediate relations is also not uncommon. At times, even after the conclusion of the criminal trial, it is difficult to ascertain the real truth. 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. The allegations of harassment of husband's close relations who had been living in different cities and never visited or rarely visited the place where the complainant resided would have an entirely different complexion. The allegations of the complaint are required to be scrutinised with great care and circumspection.

36. Experience reveals that long and protracted criminal trials lead to rancour, acrimony and bitterness in the relationship amongst the parties. It is also a matter of common knowledge that in cases filed by the complainant if the husband or the husband's relations had to remain in jail even for a few days, it would ruin the chances of an amicable settlement altogether. The process of suffering is extremely long and painful."

8. It would be further appropriate to reproduce the paragraph no. 102 of ***Bhajan Lal Case (supra)***, 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 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 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.”

9. In view of aforesaid legal and factual submissions as far issue related with territorial



jurisdiction, which was raised by petitioner having of no substance in view of aforesaid legal provisions as available under Section 178 (c) of the Cr.P.C. and also by taking legal note of **Rupali Devi case (supra)**. As far best available merit of this case is concerned, it appears that petitioners are in-laws, where petitioner nos. 1 and 2 are elder brothers-in-law and rest petitioner nos. 3, 4 and 5 are married sisters-in-law, living separately much prior to the occurrence and having prime facie no connection with daily and domestic affairs of daughter of O.P. No.2. It appears that allegation of cruelty is also appearing very much general and omnibus against them.

10. In view of aforesaid factual background and by taking note of guideline nos. 1 & 7 of **Bhajan Lal (supra)** case, impugned order of taking cognizance dated 16.06.2015 with all its consequential proceedings, *qua*, above named petitioner nos. 1 to 5, arising thereof as passed in connection with complaint case No. 149 C



of 2002 pending before learned Judicial Magistrate, 1st
Class, at Saharsa is hereby quashed and set aside.

11. Hence, this application stands allowed.

12. TCR (Trial Court Records), if any, be
returned to learned trial court alongwith the copy of this
judgment.

(Chandra Shekhar Jha, J)

Archana/-

AFR/NAFR	AFR
CAV DATE	NA
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