

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.13631 of 2016

Arising Out of PS. Case No.-3067 Year-2015 Thana- VAISALI COMPLAINT CASE
District- Vaishali

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1. Arvind Kumar Tiwari @ Girdhari Tiwari
 2. Satish Tiwari @ Bachho Tiwari
 3. Pilla Tiwari @ Ranku Tiwari @ Niranjan Tiwari, all sons of Sant Kumar Tiwari
 4. Sunil Kumar Tiwari @ Sunil Tiwari, son of Arvind Tiwari @ Girdhari Tiwari All Resident of Mohalla- Jarkhor, P.S.- Babri, District- Chandauli U.P.
 5. Vikash Mishra, son of Arun Kumar Mishra
 6. Punita Mishra @ Rani, Wife of Arun Kumar Mishra, Both Resident of village- Jarkhor, P.S. Babri, District- Chandauli U.P., Renter of Girdhari Tiwari, presently resident of Mohalla- Jai Bharat Byamsala Mishra Pokhra, P.S.- Laksa, District- Varanasi U.P.

... .. Petitioner/s

Versus

1. The State of Bihar.
2. Sandhya Pandey, wife of Rakesh Shukla, Resident of village- Chota Mirjapur, P.S.- Adalahat, District- Mirjapur U.P., Presently Daughter of Late Mahendra Pandey, Resident of village- Panapur Langa, P.S. Sadar Haripur, District- Vaishali

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Nachiketa Jha, Advocate
For the Opposite Party/s : Mr. Madan, APP

CORAM: HONOURABLE MR. JUSTICE CHANDRA SHEKHAR JHA
ORAL JUDGMENT

Date : 28-03-2024

1. Heard learned counsel appearing on behalf of the parties.

2. The present application has been filed for quashing the order dated 09.12.2015 passed in Tr. No. 1679/16, arising out of Complaint case no. 3067/15



dated 25.08.2015 passed by learned J.M. 1st Class, Vaishali at Hazipur, where cognizance was taken for the offences under section 379 of the Indian Penal Code.

3. Prosecution case in brief is that one Sandhya Pandey wife of Rakesh Shukla of village Chota Birjapur, P.S. Adalahat, District- Mirjapur (U.P.), filed a complaint case before learned Chief Judicial Magistrate, Vaishali at Hazipur on 25.08.2012, alleging precisely therein inter alia that the complainant alongwith her father-in-law went at her parents' house. On 23.08.15 at 4.00 P.M. all accused persons arrived at her parents' house and told to visit Harihar Nath Temple at Sonapur, therefore, they all went there. She arranged their food and bed, they take their meal and stayed there. In the next morning on 24.08.15, all persons were not found there and door of her room was also broken. She further stated that a briefcase containing gold ornaments, cash and charger were also not there. She stated that they fled away with aforesaid articles, she informed the



Officer-in-charge of Sadar (Hazipur) P.S. but case was not registered.

4. It is submitted by learned counsel appearing for the petitioners that daughter of petitioner no. 1, namely, Nidhi Shukla is the first wife of the husband of the complainant. It is submitted that when the matrimonial relation between the daughter of petitioner no. 1 and husband of opposite party no. 2 become strained, a complaint case was filed by the daughter of petitioner no. 1, namely, Nidhi Shukla, which has been registered as Complaint Case No. 1978 of 2015 on 21.09.2015 before learned Judicial Magistrate, Chakiya Chandauli (U.P.) for the offences under Sections 323, 504, 506, 498A, 494, 109, 354 of the Indian Penal Code as well as for the offence under Sections 3 and 4 of the Dowry Prohibition Act, arraying opposite party no. 2 as one of the co-accused. It is submitted that to save her husband, the present false case was lodged against petitioners by opposite party no. 2 It is submitted that



petitioner nos. 2 and 3 are the brothers of petitioner no. 1, where petitioner no. 4 is the son of petitioner no. 1. Petitioner nos. 5 and 6 are the renter of petitioner no. 1. It is submitted that in the background of strained matrimonial relation, there is no occasion to visit the house of opposite party no. 2 for offering prayer at Harihar Nath. It is submitted that with ulterior and oblique motive, the present false case was lodged immediately next day of the occurrence without making any efforts to lodge case with police, purely on imaginary grounds. It is submitted that opposite party no. 2 solemnized her marriage with son-in-law of petitioner no. 1, without dissolving earlier marriage in accordance with law and just to create a pressure as to compromise Complaint Case No. 1978 of 2015 as discussed aforesaid, the present false case was lodged by opposite party no. 2 with oblique motive. It is submitted that opposite party no. 2 is also implicated through aforesaid case being second wife. While concluding the argument,



it is submitted that this case was lodged/filed as a retaliatory measure and in aforesaid circumstances, it is fit to be quashed as same amounting to abusing the process of court of law.

5. Learned APP while opposing the application submitted that though opposite party no. 2 is not the *eye-witness* of the occurrence but circumstances of this case clearly speaks that petitioners committed theft in the house of opposite party no. 2.

6. It would be apposite to re-produce para 102 of the ***State of Haryana and Ors. Vs. Bhajan Lal and Ors.***, 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."

7. In view of aforesaid factual and legal submission, as the present case *prima facie* appears lodged by opposite party no. 2 being a retaliatory measure to counter the Complaint Case No. 1978 of 2015, which was filed for the reason as opposite party no. 2 solemnized her marriage with the husband of the daughter of petitioner no. 1, accordingly, the present case appears covered under guidelines as available under (5) and (7) of the guidelines as available out of ***Bhajan Lal's Case (supra)***.



8. Accordingly, impugned order of cognizance dated 09.12.2015 passed by learned Judicial Magistrate 1st Class, Vaishali at Hajipur, is hereby set aside and quashed *qua* petitioners with all its consequential proceedings.

9. Let copy of this order be sent to the trial court, without delay.

(Chandra Shekhar Jha, J)

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AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	28.03.2024
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