

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.36750 of 2016

Arising Out of PS. Case No.-30089 Year-2014 Thana- PATNA COMPLAINT CASE District-
Patna

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1. Chandeshwar Sharma, Son of Sita Ram Sharma.
 2. Mina Sharma @ Mina Devi, Wife of Chandeshwar Sharma.
 3. Hemraj Sharma Son of Chandeshwar Sharma. All resident of 56 J/I Deviganj, Bhatho Chaukeri Kanpur- 08 P.S. Chakeri, District- Kanpur.

... .. Petitioner/s

Versus

1. The State of Bihar
2. Rakash Kumar @ Soni Son of Abadhilal, resident of Mohalla Dusadhi Pakri, P.S. Kankarbagh, District- Patna.

... .. Opposite Party/s

Appearance :

For the Petitioners	:	Mr. Sudish Kumar, Advocate. Mr. Birendra Prasad Choudhary, Advocate.
For the State	:	Mr. M Dayal, APP
For the Opposite Party No. 2:	:	None.

CORAM: HONOURABLE MR. JUSTICE JITENDRA KUMAR
ORAL ORDER

10 29-11-2024 The present petition has been filed for quashing and setting aside the order dated 03.05.2016 whereby cognizance has been taken against the Petitioners under Section 341, 323, 380 and 448 of the Indian Penal Code in Complaint Case No. 30089 (C) of 2014 passed by learned Chief Judicial Magistrate, Patna.

2. The marriage of the Petitioner with his wife/Pinki Sharma is running into rough weather and presently Pinki Sharma is living separately at her *Maikey* and she has filed one criminal complaint under Section 498A of the Indian Penal



Code. Even the efforts of the complainant/Rakesh Kumar @ Soni for restitution of conjugal rights under Section 9 of the Hindu Marriage Act has failed. This complaint has been filed by the husband against the family members of his wife. The accused persons who are Petitioners herein, are father-in-law, mother-in-law and brother-in-law (*sarhu*).

3. As per allegation made in the complaint, on the date of occurrence the complainant was informed by his uncle that his wife/Pinki Sharma and her family members, who are the accused/Petitioners herein had come to his house and assaulting his mother and Pinki Sharma/wife of the Complainant had taken away the ornaments and a sum of Rs.5,00,000/. It is also stated by the complainant in his petition that at that time his wife was living at her matrimonial home and occasionally she used to go to her *maikey*. It is further stated that after getting information from his uncle he came to the house and found that Almirah and box were open and the ornaments of his wife and Rs. 5,00,000/- were missing. Consequently, he went to the Police Station where he found that his wife and her family members were also present before the police and she stated that she was voluntarily going to her *Maikey*. On such complaint, the cognizance has been taken by learned Magistrate for the offence punishable under Sections



341, 323, 380 and 448 of the Indian Penal Code.

4. Despite service of notice upon Opposite Party No.2, he has chosen not to appear before this Court.

5. I heard learned counsel for the Petitioners and learned APP for the State.

6. Learned counsel for the Petitioners submits that the Petitioners are innocent and have falsely been implicated in this case. He further submits that as per the allegation, no offence is made out against the accused persons. As per the statement made by the complainant, it is an admitted fact that his wife, Pinki Sharma, was living at her matrimonial home and it is also admitted that his wife Pinki Sharma has taken her own ornaments. The allegation of theft and assault is superficial and made with intent to make the case serious.

7. He further submits that going by the aforesaid statements of the complainant in the complaint, there is no question of any tress-passing or commission of any theft because Pinki Sharma/wife of the complainant was residing at her *sasural* and she has taken her own ornaments. The allegation of assault is also baseless as no injury report is annexed with the complaint. As a matter of fact, the marriage between the complainant and his wife, Pinki Sharma is not working and



hence, this criminal proceeding has been initiated against mother, brother, father and other family members of his wife with an ulterior motive to harass the family members of his wife. He also informs that Criminal Complaint under Section 498A IPC has been also lodged by Pinki Sharma against her husband, who is complainant. Reconciliation proceeding between the Complainant and his wife has also failed.

8. Hence, he submits that impugned cognizance order dated 03.05.2016, passed by learned Magistrate is not sustainable in the eye of law and is liable to be quashed and set aside in the interest of justice because the whole criminal proceeding is abuse of the process of the Court.

9. However, learned APP for the State defends the impugned order submitting that there is no illegality or infirmity in it.

10. I considered the submission advanced by both the parties and perused the material on record.

11. I find that as per the statements of the complainant in his complaint and during inquiry under Section 200 Cr.PC, Pinki Sharma, wife of the Complainant, was living with the complainant at her matrimonial home and as such, there is no question of any tress-passing by her or her parents or other



family members. Offence of theft is also not made out because Pinki Sharma/wife of the Complainant has taken her own ornaments. The allegation of any other offence is nothing but superficial addition with an ulterior motive to wreck vengeance on the family members of his wife. As per learned counsel for the Petitioners, criminal proceeding under Section 498A of the Indian Penal Code have already been lodged by the wife against the complainant and his family members. Even, Matrimonial Petition under Section 9 of the Hindu Marriage Act could not brought the husband and wife together.

12. Considering the aforesaid facts and circumstances, I find that the criminal proceeding arising out of the Complaint Case No. 30089 (c) of 2014 is nothing but abuse of the process of the Court and filed *mala fide* to wreck vengeance on the Petitioners.

13. In the celebrated judgment of **State of Haryana vs Bhajan Lal [1992 Suppl (1) SCC 335]**, Hon'ble Supreme Court has held, amongst other things, 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, the inherent power



under Section 482 Cr.PC may be invoked by the Court to prevent the abuse of the process of Court and secure the ends of justice.

14. Hence, the impugned order is not sustainable in the eye of law. It is liable to be quashed and set aside under Section 482 Cr.PC to prevent abuse of the process of Court and to secure the ends of justice.

15. Accordingly, this application is allowed, quashing and setting aside the impugned order dated 03.05.2016 passed by learned Chief Judicial Magistrate, Patna, in Complaint Case No. 30089 (C) of 2014.

16. The application stands disposed of.

(Jitendra Kumar, J)

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