

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.45857 of 2015

Arising Out of PS. Case No.-881 Year-2007 Thana- NALANDA COMPLAINT CASE
District- Nalanda

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1. Brijnandan Prasad and Ors. Son of Late Basudeo Mahto
 2. Barti Devi Wife of Brijnandan Prasad
 3. Satendra Prasad
 4. Subodh Kumar Both sons of Brijnandan Prasad
 5. Ram Sharan Prasad Son of Late Laldhari Mahto
 6. Ramnandan Prasad Son of Late Basudeo Mahto
 7. Jadunandan Mahto @ Yadunandan Mahto Son of Late Dhaka Mahto All residents of Village - Kosuk, P.S. - Deepnagar, District - Nalanda.
 8. Pappu Kumar Son of Ram Sarup Prasad
 9. Usha Devi Wife of Pappu Kumar and Daughter of Brijnandan Prasad Both residents of Village - Sarichak, P.S. - Nalanda, District - Nalanda.

... .. Petitioner/s

Versus

1. State Of Bihar and Anr
2. Shakuntala Kumari @ Shakuntala Devi wife of Jamindra Prasad and Daughter of Shyam Kishore Prasad @ Kishori Prasad resident of village - Sattopur, P.S. - Nalanda, District - Nalanda.

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr. Bharat Lal, Advocate
	:	Mr. Rabindra Kumar, Advocate
For the Complainant	:	Mr. Umesh Kr. Verma, Advocate
	:	Mr. Satyendra Prasad, Advocate
For the Opposite Party/s	:	Mr. Jagdhar Pd, APP

CORAM: HONOURABLE MR. JUSTICE CHANDRA SHEKHAR JHA
ORAL ORDER

8 15-02-2024 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 05.08.2015 passed in Complaint Case
No. 881C of 2007, where learned Judicial Magistrate, 1st Class,



Nalada at Biharsharif took cognizance for the offences punishable under sections 494 and 109 of the Indian Penal Code against the petitioners and rejected petition under Section 245 of Cr.P.C.

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

4. From the crux of complaint petition it appears that petitioners are none but the father, mother, brother, co-villagers, uncle and sister of the husband of O.P. No. 2. Jamindra Prasad, who alleged to solemnize his marriage within lifetime of O.P. No. 2 with one Shakuntali Devi, without getting their marriage dissolved under due process of law.

5. It is submitted by learned counsel that the degree of evidence/materials as to take cognizance and while considering the discharge petition are of different standard and same cannot be disputed. It is pointed out that while examining the OP No. 2 as before charge absolutely nothing incriminating evidence appears surfaced against the petitioners and same is the position of other witnesses, who are father and brother. It is submitted that even allegation of instigation not appears against petitioners and as such the impugned order is appearing not to cater any purpose of justice by allowing the proceedings further,



which would amount nothing but misusing process of law.

6. In support of the submissions learned counsel relied upon the report of Hon'ble Supreme Court in the case of **Chand Dhawan (SMT) Vs. Jawahar Lal and Others** as reported in **(1992) 3 SCC 317**, wherein Hon'ble Supreme Court categorically held that the allegation made against family members/respondents imputing them with guilty knowledge unsupported by other materials would not justify the continuance of proceeding against such respondents. Pressing the report learned counsel submitted that in the present case even from the evidence of O.P. No. 2 and other complainant witnesses it cannot be said that petitioners having more anything than guilty knowledge and same can also import from the narration of complaint petition.

7. 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.”

8. Learned APP duly assisted by learned counsel appearing on behalf of O.P. No. 2 submitted that the petitioners as per complaint petition played active role in alleged marriage during lifetime of O.P. No. 2 without getting their marriage dissolved under due process of law. It is submitted that petitioners are aware regarding whereabouts of the husband of O.P. No. 2 but intentionally they are not disclosing and forced O.P. No. 2 to lead her life in destitution alongwith her daughter aged about 20-21 years. It is also pointed out by learned counsel that a separate case under Section 498 A of the Indian Penal Code and also regarding dowry demand is pending against the husband of O.P. No. 2, who is son of petitioner no. 1 &2.

9. In view of aforesaid factual and legal discussions as petitioners are family members, relatives and co-villagers of husband of O.P. No. 2, where even allegation of instigation is not appearing available from the deposition of O.P. No. 2, while examining before charge, accordingly impugned order dated



05.08.2015 and all consequential proceeding arising thereof as passed in Complaint Case No. 881C of 2007, pending before learned Judicial Magistrate, 1st Class, Nalada at Biharsharif is hereby quashed and set aside.

10. The application stands allowed.

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

(Chandra Shekhar Jha, J.)

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