

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No. 9452 of 2016

Arising Out of PS. Case No.-227 Year-2015 Thana- BOCHAHAN District- Muzaffarpur

1. Md. Rafi Ahmad @ Rafi Ahmad, Son of Late Md. Shoaib, resident of Village- Banauli, P.S.- Simri District- Darbhanga at present resident of 34 Harding Road, Haj Bhawan, P.S.- Sachiwalaya , Patna.
2. Abdur Rahman Son of Late Abdul Ghani
3. Md. Akbar, son of Late Abdur Rahman Both resident of Village- Gopalpur Gopal P.S.- Bochahan District- Muzaffarpur.

... .. Petitioner/s

Versus

1. State of Bihar
2. Safina Khatoon, daughter of Md. Tayyab, resident of Villge- Gopalpur Gopal, P.S.- Bochahan, District- Muzaffarpur.

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr. Asif Kalim, Adv. Mr. Arif Daula Siddique, Adv.
For the State	:	Mr. Binod Kumar No. 3, APP
For the O.P. No. 2	:	Mr. Syed Qaiser Hasan, Adv. Mr. Arshad Alam, Adv.

CORAM: HONOURABLE MR. JUSTICE SHAILENDRA SINGH
ORAL ORDER

22 03-04-2025

Re : I.A. No. 01 of 2024

By this interlocutory application, a prayer for amendment in the relief portion of the original quashing application, has been made.

2. It is submitted by petitioners' counsel that the petitioners initially prayed for to quash the FIR of Bochahan P.S. Case No. 227 of 2015 but later on, during the pendency of the quashing application, the police completed investigation and exonerated petitioners No. 2 and 3 from the allegations levelled



against them in the FIR and consequently, they were not sent up by the police, so, in view of this development, he wants to withdraw this petition in respect of petitioners No. 2 and 3 and in this regard, necessary permission is required. It is further submitted that as the investigation in relation to Bochahan P.S. Case No. 227 of 2015 has been completed and petitioner No. 1 has been chargesheeted by police vide Final Form/Chargesheet No. 52/2024, so, the petitioner No. 1 is now praying for to quash the said police report and in this regard wants to add an additional prayer in the main quashing application.

3. Considering the aforesaid submissions, the criminal miscellaneous application stands dismissed in respect of petitioners No. 2 and 3 on account of it being infructuous in respect of them. The prayer made by petitioner No. 1 in the instant I.A. No. 01 of 2024 for adding additional prayer in the main petition is hereby allowed.

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4. The present criminal miscellaneous petition has been filed under section 482 of the Code of Criminal Procedure (in short 'Cr.P.C.') initially with a prayer to quash the Bochahan P.S. Case No. 227 of 2015 dated 11.12.2015 registered for the offences under sections 341, 323, 307, 379, 447, 448, 504, 506



and 354 read with section 34 of the Indian Penal Code (in short 'IPC') and also for quashing the chargesheet No. 52 of 2024 dated 20.03.2024 filed for the offences under sections 341, 323, 307, 447 and 504 of IPC against the petitioner No. 1.

5. Mr. Asif Kalim, learned counsel appearing for the petitioner No. 1 submits that as per the FIR, the alleged occurrence is said to have taken place on 03.12.2015 but the *fardbeyan* of the informant was recorded three days after the commission of the alleged occurrence and the formal FIR was registered on 11.12.2015 i.e. 8 days later from the date of occurrence. The FIR was registered against six persons including the petitioner No. 1, who is completely innocent and a false story relating to the alleged occurrence has been concocted by the O.P. No. 2, the informant of the present matter. Though, the petitioner No. 1 admittedly married the informant in the year 2004 and from the said wedlock, the O.P. No. 2 gave birth to three daughters but due to some serious differences arose in between them, ultimately on 05.06.2015, the petitioner No. 1 divorced the O.P. No. 2 and since then, they did not remain as husband and wife and they have not been living together since 2014. It is further submitted that on 05.06.2015 with the allegations of dowry demand and cruelty, the O.P. No. 2 lodged



Gardanibagh P.S. Case No. 201 of 2015 against the petitioner No. 1 and others and thereafter, on 16.09.2015, she filed a maintenance case against the petitioner No. 1 and these cases clearly show that there was strained relation between the petitioner No. 1 and the O.P. No. 2 prior to the registration of the FIR of present matter. Learned counsel further submits that the O.P. No. 2 had married two other persons before solemnizing marriage with the petitioner No. 1 and the factum of her earlier marriages was concealed by her from the petitioner No. 1, which shows her malafide intention in starting and leading conjugal relationship with the petitioner No.1 and the alleged occurrence is said to have taken place on 03.12.2015 but on that day, the petitioner was not present at the alleged place of occurrence rather he was discharging his duty at Rajgir where he was deputed to do some official work from 26.11.2015 to 29.11.2015 and from 03.12.2015 to 04.12.2015 in connection with Rajgir Mahotsaw, 2015 and in this regard, Annexure – ‘6’ official order, by which that deputation was made, is relevant and during the investigation, the said deputation had come in the knowledge of the police but even then, the petitioner’s presence at the alleged place of occurrence on the alleged date and time was not investigated, which shows the malafide intention of the



Investigating Officer and the injury report of the informant was issued on 12.01.2016 whereas she had recorded her *fardbeyan* at the hospital on 06.12.2015. It is further submitted that during the investigation, neither the informant in her restatement nor other witnesses, who were examined by the investigating officer, said anything to support the specific allegation levelled by the informant in the FIR against the petitioner and on the same set of evidences collected by the investigating officer, particularly, the statements of independent persons, the co-accused persons were exonerated by the police by not sending them up while the petitioner No. 1 was chargesheeted, which shows the malice intention on the part of I.O. It is lastly submitted that there is series of cases lodged by the mother of the informant as well as by the informant herself against the petitioner and co-accused persons, one Complaint Case bearing No. 1122/2001 filed by the mother of the informant against Abdul Rahman ended in acquittal of the said Abdul Rahman and second Complaint Case No. 588/2001 which was also filed by the mother of the informant against the same person and others, was subsequently dismissed as withdrawn and thereafter, the mother of the informant again filed a complaint case against the petitioner and his family members bearing Complaint Case No.



80/2022, which was also dismissed vide order dated 23.01.2006 passed in that case and all these cases show that not only the O.P. No. 2 but also her mother have remained indulged in lodging false cases against the petitioner No.1 and others and the petitioner No. 1 is a Government employee working in Bihar State Minorities Financial Corporation Limited, Patna.

6. On the other hand, Mr. Syed Qaiser Hasan, learned counsel appearing for the O.P. No. 2 submits that the O.P. No. 2, who happens to be the wife of the petitioner No. 1, has never accepted the factum of divorce which is said and claimed to have been given by the petitioner No. 1 and there is serious allegation against the petitioner No. 1 and the same gets corroboration from the injury report of the O.P. No. 2 filed as Annexure 'D' to the counter affidavit and the FIR was registered on the basis of *fardbeyan* of O.P. No. 2, which was recorded by her in injured condition at Shree Krishna Medical College and Hospital (in short 'SKMCH'), Muzaffarpur. During the investigation, the O.P. No. 2, the informant, as well as other witnesses fully supported the case of the O.P. No. 2 and the police chargesheeted the petitioner No. 1 for the alleged offences. It is further submitted that the O.P. No. 2 is a legally wedded wife of the petitioner No. 1, out of their wedlock, three



daughters have taken birth and on account of the atrocities committed by petitioner No. 1 with the O.P. No. 2, she left her matrimonial house and thereafter, she started residing at her mother's house at Muzaffarpur and the alleged occurrence of the present matter took place at her mother's house at Muzaffarpur and before the commission of the alleged occurrence of the present matter, the O.P. No. 2 had been earlier subjected to physical torture for the demand of vehicle and Rs. 2,00,000/- (Rupees Two Lakhs) by her husband and others, regarding which Gardanibagh P.S. Case No. 201/2015 was also lodged by the O.P. No. 2 against her husband and others, in which the petitioner No. 1 was also chargesheeted.

7. Heard both the sides, perused the FIR and case diary of Bochahan P.S. Case No. 227 of 2015 as well as other relevant materials. As per the allegation levelled in the FIR, on 03.12.2015 at about 23:30 hours, the O.P. No. 2 went out of her house to attend call of nature and in that course, the petitioner No. 1, husband of the O.P. No. 2, and other accused persons along with 2-4 unknown persons, armed with pistol and other weapons entered into her house through the roof side and started assaulting and abusing her, the petitioner No. 1 assaulted her father on the head by pistol, resulting in head injury to him and



two other named persons, namely, Md. Akbar and Md. Yakub wrapped a rope around her neck and dragged her out of her house. It has been further alleged by O.P. No. 2 that during the commission of the alleged occurrence, her clothes were torn out by the accused persons and they misbehaved with her and Rs. 45000/- was taken out from her box by breaking its lock and some ornaments were also snatched by the accused. The O.P. No. 2, informant, recorded her fardbeyan in ward No. 12 of SKMCH, Muzaffarpur, on that basis, the formal FIR was registered and regarding her injuries, the injury report was also issued, though the same was issued on 12.01.2016 but as per the Annexure 'D' filed with the counter affidavit, the medical officer who issued the said medical report accepted that the O.P. No. 2 was examined on 04.12.2015 at 3:45 A.M., and his medical findings were that : -

- (i) Pt. unconscious not able to speak
- (ii) A linear mark and abrasion around neck prominent on left lateral side of neck
- (iii) Swelling over head size $\frac{1}{2}$ " x $\frac{1}{2}$ " tenderness present
- (iv) Clothes were torn.

During the investigation, the investigating officer



examined the independent persons, whose statements are mentioned in the paragraphs No. 75, 76 and 77 of the case diary. All of them supported the incident of abusing and *marpit* committed by the petitioner with the O.P. No. 2 and to the extent of the said incident, their statements are supportive and there is also medical evidence in this regard. Though the said witnesses did not support the allegations levelled by the O.P. No. 2 against the other accused but merely by this fact and even in the light of petitioner's plea of *alibi*, the allegations made by the informant cannot be disbelieved completely at this stage, particularly, in the light of medical evidence which is supportive to her allegations. Though there are several cases in between the petitioner No. 1 and O.P. No. 2 but in the light of the aforesaid incriminating circumstances appearing against the petitioner No. 1, it will not be proper to exonerate him from the alleged offences at this stage, for which he has been chargesheeted and admittedly, the O.P. No. 2 has spent a long period as his wife and has three children from their conjugal relationship and there is no material to show the legality of the divorce which is claimed to have been given by the petitioner No. 1 to the O.P. No. 2, however, mere such dissolution of marriage cannot be made a ground to quash the FIR which resulted in chargesheet



against the petitioner No. 1. Furthermore, the aforesaid defences as well as pendency of several cases in between both the parties do not persuade this Court to form the opinion that the allegations levelled by the O.P. No. 2 against the petitioner No. 1 are completely false, though the defences and grounds taken by the petitioner No. 1 in this petition may be relevant before the trial court at proper stage. Accordingly, this Court finds no merit in the petitioner’s prayers, so, the instant petition stands dismissed.

(Shailendra Singh, J)

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