

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.2401 of 2016

Arising Out of PS. Case No.-166 Year-2013 Thana- PHULPARAS District- Madhubani

Mangani Lal Mandal S/o Late Jhoti Mandal resident of village - Gorgawan,
P.S. Phulparas, District - Madhubani.

... .. Petitioner/s

Versus

1. State Of Bihar
2. Ashish Ranjan s/o Sri Mangani Lal Mandal R/o Vill - Gorgawan, P.S. Phulparas, District - Madhubani.
3. Chouthia Devi, w/o Sri Mangani Lal Mandal, R/o Vill - Gorgawan, P.S. Phulparas, District - Madhubani.

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr. Anurag Saurav, Advocate Mr. Ravi Kumar, Advocate Mr. Abhinav Alok, Advocate
For the State	:	Mr. Dilip Kumar, APP
For the O.P.s	:	None

CORAM: HONOURABLE MR. JUSTICE JITENDRA KUMAR
ORAL JUDGMENT

Date : 17-01-2025

The present petition, under Section 482 Cr.PC, has been preferred against the impugned order dated 07.06.2015/08.06.2015, passed by learned Sub Divisional Judicial Magistrate, Jhanjharpur, Madhubani, whereby learned S.D.J.M. has taken cognizance of the offence punishable under Sections 341, 323, 337, 504, 506, 498A and 494 read with Section 34 of the Indian Penal Code against seven accused, including the present petitioner.

2. The prosecution case, as emerging from the FIR, lodged by one Ashish Rajan, son of the accused-petitioner, is



that the father of the informant, who is the petitioner herein, is keeping one Arti Devi as his wife. The said Arti Devi, is already a married lady, having two children. On her instigation, the petitioner-father has stopped maintaining the informant and his mother and have been torturing them in various ways and even transferring land in the name of the said Arti Devi. On protest by the mother of the informant, she was assaulted on the order of the petitioner herein by Arti Devi, Deepak Mandal, Ajit Mandal, Harinarayan Yadav and Gulab Yadav. On hulla, when the brother of the informant came to rescue them, he was also assaulted by Anu Kumar.

3. After lodging of FIR, investigation was conducted by the police and charge-sheet was submitted against all the FIR named accused persons and after charge-sheet, Ld. S.D.J.M. has passed the impugned order, whereby he has taken cognizance against the accused persons including the petitioner. Being aggrieved by the impugned order, the petitioner has preferred the present petition.

4. I heard learned counsel for the petitioner and learned APP for the State. However, nobody is present on behalf of O.P. Nos. 2 and 3, despite valid service of notice.

5. Learned counsel for the petitioner submits that the



petitioner is innocent and has falsely been implicated by the informant-son with ulterior motive and mala fide. The informant, in fact intends to harass his father and grab his property. The case has been filed when the petitioner transferred a property in the name of one Arti Devi. Moreover, there is no allegation of demand of dowry or torturing therefore. There is also no allegation that the petitioner has assaulted any of the alleged victim. He also submits that the informant is a major and he is not entitled to any maintenance from the Petitioner/Father. Moreover, no maintenance case or criminal case has been filed by the wife of the petitioner. As such, no offence under Section 341, 323, 337, 504, 506 and 498A is made out.

6. It is further submitted by learned counsel for the Petitioner that as per the allegation, even Section 494 of IPC, which provides for punishment for bigamy, is not attracted. The only allegation made by the informant/son in this regard is that the petitioner/father has kept one Arti Devi as his wife. But there is no allegation that he has solemnized his marriage with her.

7. As such, it is submitted on behalf of the petitioner that the impugned order is not sustainable in the eye of law and it is liable to be quashed and set aside under Section 482 Cr.PC



to prevent the abuse of process of the Court and to meet the ends of justice.

8. However, learned APP for the State defends the impugned order submitting that there is no illegality or infirmity in it and hence, the present petition is liable to be dismissed.

9. I considered the submissions advanced by both the parties and perused the relevant materials on record.

10. I find that the FIR has been lodged not by the wife of the Petitioner but by his major son and this FIR has been lodged when the petitioner transferred property in the name of one Arti Devi. It also transpires from the allegation that the informant/son as well as the wife of the petitioner are aggrieved by the transfer of property by the petitioner in the name of Arti Devi and on account of such grievance, the FIR has been lodged making allegation of cruelty. Even as per the FIR, no assault has been made by the petitioner against any alleged victim. The petitioner has been implicated by the informant alleging the petitioner as an order giver for assault. Such allegation appears to be prompted by vengeance and mala fide on account of transfer of property by the petitioner in the name of one Arti Devi. As such, Section 323, 341, 337, 504, 506 are not attracted in the alleged facts and circumstances of the case. There is no



allegation of any demand of dowry and torturing therefor. Hence, there is no question of application of Section 498A IPC either.

11. Even Section 494 IPC is not applicable as per the alleged facts and circumstances. The first and foremost ingredient of Section 494 IPC is solemnization of second marriage in the life time of the first spouse. But in the FIR, there is no such allegation that the petitioner has solemnized his marriage with Arti Devi. Only allegation is that Arti Devi is being kept by the petitioner as a wife.

12. As far as allegation regarding neglect of the petitioner to maintain the informant/son and wife is concerned, such negligence is not an offence, though it gives cause of action to the person aggrieved to initiate maintenance proceeding before Family Court.

13. Hence, I find that no prima facie case is made out against the petitioner and prosecution has been initiated by the informant/son with *mala fide* and ulterior motive. Therefore, the impugned order is liable to be quashed and set aside under Section 482 Cr.PC. In the celebrated judgment of **State of Haryana Vs. Bhajan Lal [1992 Suppl (1) SCC 335]**, Hon'ble Supreme Court has clearly held that if allegation made in the



FIR and the charge-sheet do not *prima facie* constitute any offence or make out a case against the accused, the criminal proceeding is liable to be quashed and set aside under Section 482 Cr.PC. Hon'ble Supreme Court has also held in the same judgment that 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, 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.

14. Accordingly, the present petition is allowed, quashing and setting aside the impugned order and all further proceedings arising out of it.

(Jitendra Kumar, J.)

Shoaib/Chandan/-

AFR/NAFR	NAFR
CAV DATE	NA
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