

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**CRIMINAL MISCELLANEOUS No.43317 of 2022**

Arising Out of PS. Case No.-152 Year-2022 Thana- Patna Complaint Case District- Patna

1. Sagar Suresh Gawand @ Sagar @ Sagar Gawand, son of Suresh Gawand, resident of Ganesh Darshan, B wing, 5<sup>th</sup> Floor, Room No.518, Balu Changu Patil, Opp. Ganesh Mandir, Umarchadi, Chinchbunder, Mumbai, Maharashtra- 400009
2. Komal Nikhilesh Anand, wife of Nikhilesh Anand, resident of Shree Laxmi Residency, C-1, Flat No. 1801, N.M. Joshi Marg, Opposite Byculla Railway Station, Byculla West , VTC- Mumbai, P.O. VJB Udyan, District -Mumbai, Maharashtra-400027.
3. Nilima Suresh Gawand @ Nilima, wife of Suresh Gawand, resident of Ganesh Darshan, B Wing, 5<sup>th</sup> Floor, Room No. 518, Balu Changu Patil Opp. Ganesh Mandir, Umarchadi, Chinchbunder, Mumbai, Maharashtra- 400009
4. Suresh Balkrishna Gawand @ Suresh Gawand @ Suresh S/o Balkrishna Gawand R/o B Wing, 5th Floor, Room No. 518, Balu Changu Patil Opp. Ganesh Mandir, Umarchadi, Chinchbunder, Mumbai, Maharashtra- 400009

... .. Petitioners

Versus

1. The State of Bihar
2. Krishna Ballabh Singh, son of late Ram Chiran Singh, resident of village and Post- Barhiya, Lakhisarai, Bihar. Presently reside at C/o Vijay Singh, Barh Station Road, Ward No. 2, Barh, Patna, Bihar.

... .. Opposite Parties

**Appearance :**

|                            |                               |
|----------------------------|-------------------------------|
| For the Petitioner/s :     | Mr. Aryan Sinha, Advocate     |
| For the Opposite Party/s : | Mr. Shailendra Kumar, APP     |
| For the Opp. Party no.2 :  | Mr. Uma Kant Mishra, Advocate |
|                            | Mr. Shakib Ayaz, Advocate     |

**CORAM: HONOURABLE MR. JUSTICE SANDEEP KUMAR**

**ORAL JUDGMENT**

**Date : 24-04-2025**

Heard learned counsel for the petitioners, learned  
APP for the State and learned counsel for the opposite party  
no.2.

2. This application has been filed for quashing



the order dated 16.04.2022 passed by the learned Judicial Magistrate, 2<sup>nd</sup> Class, Barh, Patna, in Complaint Case No. 152(C) of 2022, by which the learned Magistrate has taken cognizance against the petitioners for the offence under sections 323, 341, 448, 504 and 506 read with section 34 of the Indian Penal Code.

3. As per the complaint petition, the son of the opposite party no.2 namely, Nikhilesh Anand got married to petitioner no.2-Komal Nikhilesh Anand. It is alleged that after marriage, the petitioner no.2 used to demand money from his son on regular basis and she started living in her maternal house. When the opposite party no.2 and his family members objected the same, on 12.12.2021 all the petitioners came in the house of the opposite party no.2 physically and verbally abused the son of the opposite party no.2. They also demanded Rs.25,00,000/- and took away jewellery and household items from the house of the opposite party no.2. For the aforesaid incident, the son of the opposite party no.2 filed a Complaint Case bearing Complaint Case No. 647(C) of 2021. When the petitioners came to know about the same, they started pressurizing the opposite party no.2 and his family members to withdraw the aforesaid complaint case. It is also alleged that on



20.03.2022 at around 1:00 P.M. all the petitioners came to the house of the opposite party no.2 and threatened to kill him. When the opposite party no.2 objected the same, the petitioners assaulted the opposite party no.2 and snatched Rs.3,000/- from his pocket. When the local people came, the petitioners fled away.

4. The learned Magistrate, vide impugned order dated 16.04.2022 has taken cognizance against the petitioners for the offence under sections 323, 341, 448, 504 and 506 read with section 34 of the Indian Penal Code.

5. Learned counsel for the petitioners submits that the order taking cognizance against the petitioners is bad in law as well as on facts as the petitioners are absolutely innocent and have not committed any offence as alleged in the Complaint Case.

6. Learned counsel for the petitioners further submits that as per the complaint petition i.e. Complaint Case No. 152(C) of 2022, the first incident took place on 12.12.2021 at the house of the opposite party no.2 and in the Complaint Case No.647(C) of 2021, it has been alleged that the petitioner no.1 assaulted him and snatched a golden chain from him. However, the real fact is that the petitioner no.1 was not even



present at the place of the alleged occurrence and he was in Rajasthan from 10.12.2021 to 12.12.2021 to attend the marriage of his friend.

7. Learned counsel for the petitioners also submits that the petitioner no.1 lives in Mumbai and at the time of alleged incident, he was not present at the alleged place of occurrence. The petitioner no.1 was travelling to Sawai Madhopur, Rajasthan from Mumbai Central on 09.12.2021 by train having PNR No.8244190019 and after reaching Sawai Madhopur, Rajasthan, he stayed in a hotel for the period from December 10, 2021 to December 11, 2021 and had visited Ranthambhore National Park on 11.12.2021. After visiting Ranthambhore National Park, went to Kota from Sawai Madhopur on 11.12.2021 by train having PNR No.2230432418 and stayed in a Hotel in Kota and thereafter, he returned to Mumbai from Kota by train on 12.12.2021 having PNR No.2711132349. Therefore, it is crystal clear that the petitioner no.1 was not present at the alleged place of occurrence and all the allegations levelled against him are false and frivolous. Thus, cognizance under sections 323, 341, 448, 504 and 506 read with section 34 of Indian Penal Code against the petitioner no. 1 is bad in law and as well as on facts and is liable to be



quashed.

8. It has been submitted by learned counsel for the petitioner that the marriage between the petitioner no.2 and the son of the opposite party no.2 was solemnized on 11.12.2020 at Bombay in Andhra Mahasabha Hall as per Hindu rites and rituals. Soon after the marriage, the son of the opposite party no.2 started abusing and torturing the petitioner no.2 and therefore, the petitioner no.2 registered an FIR being Agripada P.S. Case No.657 of 2021 dated 27.07.2021 for the offences under Section 498-A of the Indian penal Code and thereafter she had filed a Criminal Complaint Case 80/DV/2021 under Section 12 of the Protection of Women from Domestic Violence Act, 2005 before the learned Court of Metropolitan Magistrate, Mazgoan, Mumbai against her husband and his family members.

9. It has also been submitted by learned counsel for the petitioners that the opposite party no.2 has filed the instant complaint case no.152 (C) of 2022 only after his son received notice in criminal complainant case No. 80/DV/2021 from the court of learned Metropolitan Magistrate. Thus, it appears that the present complaint case has been filed by the opposite party no.2 in counter blast to the FIR being Agripada



P.S. Case No. 657 of 2021 dated 27.07.2021 and criminal complainant Case No. 80/DV/2021 in order to save his skin.

**10.** It has been argued by learned counsel for the petitioners that though in the complaint petition it has been alleged that the petitioners have assaulted the opposite party no.2 and his family members but, no injury report has been annexed with the complaint petition to support this statement. In fact, the petitioners had never visited or had tried to enter into the house of the opposite party no.2 situated at Barh, Patna with an intention to commit any offence and thus, it appears that the opposite party no.2 has cooked up a false and frivolous story against the petitioners.

**11.** It has further been argued that the ingredients of section 504 of the Indian Penal Code is that intentional insult must be of such a degree that should provoke a person to break the public peace or to commit any other offence. Whereas, from perusal of the entire complaint petition, it appears that there is no allegation of committing insult of opposite party no.2 or his family members. Thus, the cognizance taken under section 504 of the Indian Penal Code is improper and illegal and is liable to be quashed.

**12.** It has been argued that the petitioners have



never threatened the opposite party no.2 or his family members and none of the petitioners have asked the opposite party no.2 or his any family member to do any act which he is not legally bound to do. Thus, the cognizance under section 506 of the Indian Penal Code is improper and liable to be dismissed.

**13.** Lastly, it has been submitted by learned counsel for the petitioners that the opposite party no.2 is the father-in-law of the petitioner no.2 and the opposite party no.2 and his family members have filed a number of cases in Bihar against the petitioners after an F.I.R. under section 498-A of the Indian Penal Code was filed by the petitioner no.2 at Mumbai against the opposite party no.2 and his family members.

**14.** Learned APP for the State and the learned counsel for the opposite party no.2 have supported the impugned order, by which the learned Magistrate has taken cognizance against the petitioners and they have submitted that from reading of the complaint petition and the statement of the witnesses, the offences are made out against the petitioners and therefore, there is no infirmity in the impugned order passed by the learned Magistrate.

**15.** I have considered the submissions of the parties and perused the materials on record.



16. The petitioner no.2 is the daughter-in-law of the opposite party no.2 and petitioner nos.1, 3 and 4 are brother, mother and father of petitioner no.2 and they are residing in Mumbai (Maharashtra). From perusal of the records, it appears that the petitioner no.2 had filed an F.I.R. in the State of Maharashtra viz. Agripada P.S. Case No.657 of 2021 on 27.07.2021 against her husband and his family members for the offence under section 498-A of the Indian Penal Code and also a Criminal Complaint Case No.80/DV/2021 under section 12 of the Protection of Women from Domestic Violence Act, 2005 before the learned Metropolitan Magistrate, Mazgoan, Mumbai against her husband and his family members. The present complaint case has been filed by the father-in-law of the petitioner no.2 in the year 2022. Thus, the present complaint petition appears to be a counter blast of Agripada P.S. Case No.657 of 2021 and Criminal Complaint Case No.80/DV/2021 filed by the petitioner no.2 against her husband and his family members. I am of the view that it is a *mala fide* prosecution which has maliciously been instituted with an ulterior motive for wreaking vengeance on the petitioners and therefore, the continuation of proceeding against the petitioners would be an abuse of process of the Court.



17. In view of the aforesaid, this application is allowed. Accordingly, the complaint Case No.152 (C) of 2022 and all consequential proceedings arising out of the aforesaid complaint case including the order taking cognizance dated 16.04.2022 passed by the learned Magistrate are hereby quashed with a warning to the opposite party no.2 that he should not lodge false and fabricated cases against his daughter-in-law and other family members. If the opposite party no.2 chooses to file fresh false and fabricated cases against them, heavy cost shall be imposed upon him.

(Sandeep Kumar, J)

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