

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.1365 of 2024

Arising Out of PS. Case No.-511 Year-2023 Thana- GOPALGANJ COMPLAINT CASE
District- Gopalganj

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1. SUFIYAN @ MD. SUFIYAN BABU Son of late Moharram Ali Resident of Village - Makhdoom Sarai, P.S.- Siwan (m), District- Siwan.
 2. Ekhlague Ahmad @ Ekhlague Ansari Son of Khurshid alam Resident of Village - Makhdoom Sarai, P.S.- Siwan (m), District- Siwan.
 3. Kamrullah @ Kamrul Hoda Ansari son of Late Badruddoza Ansari Resident of Village - Karbala, P.S.- Barharia, District- Siwan.
 4. Aliya Khatoon @ Aliya Khurshid Wife of Kamrul Hoda , D/o Khurshid alam Resident of Village - Karbala, P.S.- Barharia, District- Siwan.
 5. Sultan Ansari @ Sultan Ahmad Ansari Son of Late Shamsul Hoda Resident of Village - Karbala, P.S.- Barharia, District- Siwan.
 6. Munan Khatoon @ Sama Anjum Wife of Sultan Ansari @ Sultan Ahmad Ansari D/o Khurshid Alam Resident of Village - Karbala, P.S.- Barharia, District- Siwan.
 7. Julfekar @ Julfekar Ali Son of Late Hadis Resident of Village - Paraswa Tola, P.S.- Barharia, District- Siwan.
 8. Chunan Khatoon @ Taslim Anjum Wife of Zulfekar Ali, D/o Khurshid Alam Resident of Village - Parsawa Tola, P.S.- Barharia, District- Siwan.
 9. Sara Khurshid @ Munni khatoon @ Sara Khushid Wife of sufiyan @ Md. Sufiyan Babu , D/o Khurshid alam Resident of village - Makhdoom Sarai, P.S.- Siwan, District- Siwan.
 10. Zamila Khatoon Wife of Khurshid Alam Resident of Village- Makhdoom Sarai, P.S.- Siwan (m), District- Siwan.

... .. Petitioner/s

Versus

1. The State of Bihar
2. Gyasuddin Mian Son of Late Abdul Gafoor Resident of Village - Pathara, P.S.- Manjha, District- Gopalganj, Mob. No. 8083133175.

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr. Asif Kalim, Adv. Mr. Md. Aslam Ansari, Adv. Mr. Shahid Jawed, Adv. Mr. Noumaan Ahmad, Adv.
For the State	:	Mr. Satyendra Narayan Singh, Adv.
For the Opposite Party/s:		Mr. Kumar Anupam, Adv. Mr. Krishnaditya Tiwari, Adv.



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CORAM: HONOURABLE MR. JUSTICE CHANDRA SHEKHAR JHA
ORAL JUDGMENT

Date : 23-01-2025

Heard the parties.

2. That this is an application for quashing the order dated 09.06.2023 passed by Chief Judicial Magistrate Gopalganj in connection complaint case No. 511 of 2023 whereby and whereunder learned Magistrate took cognizance for the offence punishable u/s 323 and 341 of the IPC against the petitioners and others.

3. As per the prosecution story, a complaint was filed by complainant namely Gyasuddin Miyan on 14.03.2023 alleging that the second marriage of his son namely, Gausul Azam was solemnized with one Ambiya Khatoon according to Muslim Custom on 17.05.2022. It was further stated that first marriage of Gausul Azam was solemnized with sister of Ambiya Khatoon namely, Nurhat and from their wedlock a female child namely, Afnan Azam was born. Accused no. 2, 3 and 4 are father-in-law, mother-in-law and brother-in-law respectively where as



accused no. 5, 8, 10 and 12 are sister-in-laws and accused No. 6, 7, 9 and 11 are husband of accused no. 5, 8, 10 and 12. In-laws of the complainant's son Gausul Azam went to foreign for livelihood. Khurshid Alam took away his daughter and her grand-daughter to his house from the house of the complainant. After some time they have killed Nujhat Azmi. After hearing the death of his wife Gausul Azam come back to India and without informing the informant all accused persons married Ambiya Khatoon with the son of the informant Gausul Azam. It is further stated that father, grand-father and grandmother are the legal guardian of Afnan Azam aged about 15 years (daughter of Gausul Azam). On 12.02.2023 the informant along with witnesses went to the house of daughter-in-law Ambiya Khatoon and granddaughter to bring them, but Khurshid Alam refused to perform Rukshadi, than once again on 05.03.2023 the informant went to the house of Accused no. 1, 2, 3 and 4 but accused no. 2 in place of Rukhsati put a pre-condition



to execute a sale deed of 10 *katha* land, on refusal all accused persons were assaulted with slap and fists. Hence the present complaint.

4. Learned counsel for the petitioner submitted that even upon the perusal of complaint petition and the SA of the complainant and other inquiry witnesses, no *prima-facie* case made out against petitioners for the offence under Sections 323 and 341 of the IPC. It is submitted that the petitioners are distant relatives and due to ulterior and oblique motive, the present implication was made. It is also pointed out that the complaint petition is not supported by affidavit.

5. In support of his submission learned counsel relied upon the legal report of Hon'ble Supreme Court as available through ***State of Haryana and Ors. vs. Bhajan Lal and Ors.*** reported in ***1992 Supp (1) SCC 335.***

6. Learned counsel appearing for O.P. No. 2 while opposing the petition submitted that the allegations



of only abuse appears available against these petitioners, whereas the specific allegation for physical assault is available against co-accused Khurshid and his son who are not the petitioners, whereas he fairly conceded that the physical assault is not available against these petitioners.

7. In this context, it would be apposite to reproduce para 102 of ***Bhajan Lal case (supra)*** which reads as follows:-

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 information 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 any 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 person 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. From the perusal of record it appears that learned trial court through impugned order took cognizance for the offence under Section 323 and 341 of the IPC.

9. In this context, it would be apposite to reproduce Section 323 and 341 of the IPC for the sake of convenience which is as under :-

323. *Whoever, except in the case provided for by section 334, voluntarily causes hurt, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine which may extend to one thousand rupees, or with both.*

341. *Whoever wrongfully restrains any person shall be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to five hundred rupees, or with both.*

10. It transpires from the records and also from the submissions that the allegations of “hurt” is not available against these petitioners and also *prima-facie* complainant including all inquiry witnesses failed to suggest any allegations of wrongful restrains *qua*



petitioners who are none but the distant relatives of the main co-accused namely Khurshid. The factual aspect of this case is covered by guideline nos. 1, 5 and 7 of the ***Bhajan Lal case (supra)***.

11. Accordingly, impugned order of cognizance dated 09.06.2023 passed by Chief Judicial Magistrate, Gopalganj, is hereby set aside and quashed *qua* above-named petitioners with all its consequential proceedings.

12. Let copy of this order be sent to the learned trial court, without delay.

(Chandra Shekhar Jha, J)

Sudha/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	04.02.2025
Transmission Date	04.02.2025

