

IN THE HIGH COURT OF JUDICATURE AT PATNA

CRIMINAL MISCELLANEOUS No.40168 of 2015

Arising Out of PS. Case No.-20 Year-2015 Thana- COMPLAINT CASE District- Jamui

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1. Md. Laikuddin and Anr Son of Late Md. Rafiquddin
2. Md. Atikuddin Son of Late Md. Rafiquddin Both resident of Mohalla - Bhainsasur, Kashi Takia, P.S. Lahairi, District - Nalanda

... .. Petitioner/s

Versus

1. State Of Bihar and Anr
2. Sajid Ali @ Sanni Son of Md. Mateen Ali Resident of village - Paithan Chowk, Purani Bazar, Jamui, P.S. AND District - Jamui ... .. Opposite Party/s

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- The Code of Criminal Procedure, 1973 – Section 482 – exercise of extra ordinary power – principles of law and categories of cases wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice. (*reliance made on :- State of Haryana and Others vs. Bhajan Lal and Others reported in 1992 Supp (1) Supreme Court Cases 335*)
- Indian Penal Code – Section 323 – Section 504 – Section 34 – allegations regarding assault and abuse is appearing very much general and omnibus, whereas the main allegation as raised through complaint petition particularly of house trespass was found disbelieved, prima facie, by learned Trial Court. it appears that out of matrimonial discord as daughter of petitioner no. 1, lodged a police case for matrimonial discord against brother of complainant, being a retaliatory measures, the present complaint case was filed. Accordingly, by taking note of guidelines as mentioned in para nos. 1, 5 and 7 of *Bhajan Lal case (supra)*. Application allowed – order taking cognizance and substantial proceeding set aside.

(Para-6 to 9)

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**Appearance :**

For the Petitioner/s	:	Mr. Mohammad Sufyan, Advocate
For the Opposite Party/s	:	Dr. Ajeet Kumar, APP
For O.P. No. 2	:	Mr. Abdul Mannan Khan, Advocate
	:	Mr. Hafiz Shahbaz Arif, Advocate

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**CORAM: HONOURABLE MR. JUSTICE CHANDRA SHEKHAR JHA  
ORAL JUDGMENT**

**Date : 11-03-2024**

1. Heard learned counsel for the petitioners  
and learned counsel for the respondents.

2. The present quashing petition has been preferred to quash the order dated 02.03.2015 passed in Complaint Case No. 20C of 2015, where learned Judicial Magistrate, IInd Class Jamui took cognizance for the offence punishable under Sections 323 and 504/34 of the Indian Penal Code against the petitioners.



3. From the crux of complaint petition it appears that one Md. Sajid Ali @ Sanni lodged a complaint case before learned CJM, Jamui on 05.01.2015 alleging an occurrence on 25.12.2014 on the basis of which after enquiry under Section 202 Cr.P.C. cognizance has been taken against petitioners. It is further alleged by the complainant that his brother Waris Ali was married with accused Najneen Parween on 08.08.2014 but in that marriage accused cheated his brother and nikah was not performed with the girl shown by them rather with an aged girl due to that reason he divorced her on 30.08.2014 and also filed a case before the Family Court. It is also alleged that due to aforesaid reason all accused persons came to his house, abused and assaulted him and in the meantime Najneen Parween and Rabiya Khatoon entered into his mother's room and took away cash and ornaments and accused Lakuddin and Atikuddin (both petitioners) took his signature on blank papers on the point of knife.



4. It is submitted by learned counsel that prior to this complaint case the daughter of petitioner no. 1 married with brother of informant namely Waris Ali, where a case was lodged as Mahila (Nalanda) P.S. Case No. 57 of 2014 on 24.09.2014. It is submitted that brother of complainant divorced the daughter of petitioner no. 1 before the court of law, which was declined to declare absolute. It is submitted that just thereafter as a retaliatory measure, present false complaint case was lodged. It is submitted that present complaint petition is out of ulterior and oblique motive making informant, wife and her family members compel to compromise in aforesaid police case. It is further pointed that allegation *qua* assault and abuse is general and omnibus. It is also submitted that the present complaint was filed for the offences punishable under Section 457, 380, 384, 323, 504 and 427 of the IPC, where allegation was disbelieved, *prima facie*, and in very mechanical manner cognizance was taken for the



offences punishable under Sections 323 and 504 of the IPC. It is submitted that main allegation as raised through complaint petition regarding house trespass disbelieved by learned Trial Court on its face and thus taking cognizance for the offences punishable under Sections 323 and 504 of the IPC is appearing absurd and as such same is liable to be quashed and set aside in given set of facts and circumstances.

5. Learned APP duly assisted by learned counsel for the complainant while opposing the present application submitted that for taking cognizance for the offence under Section 323 of the IPC, no injury report is required. It is submitted that on the point of abuse and assault enquiry witness including complainant are appearing consistent throughout the enquiry and as such the impugned order is not required to be interfered.

6. It would also 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."*

7. In view of aforesaid factual and legal discussions, it appears that out of matrimonial discord as daughter of petitioner no. 1, lodged a police case for matrimonial discord against brother of complainant, being a retaliatory measures, the present complaint case was filed. It is submitted that allegation regarding assault and abuse is appearing very much general and omnibus, whereas the main allegation as raised through complaint petition particularly of house tresspass was found disbelieved, *prima facie*, by learned Trial Court. Accordingly, by taking note of guidelines as mentioned in para nos. 1, 5 and 7 of **Bhajan Lal case (supra)**, impugned order of cognizance dated 02.03.2015 with all



its consequential proceedings, *qua*, petitioners arising thereof as passed in Complaint Case No. 20C of 2015, pending before learned Judicial Magistrate, IInd Class Jamui is hereby quashed and set aside.

8. The application stands allowed.

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

**(Chandra Shekhar Jha, J.)**

S.Tripathi/-

AFR/NAFR	AFR
CAV DATE	
Uploading Date	
Transmission Date	

