

IN THE HIGH COURT OF JUDICATURE AT PATNA

CRIMINAL MISCELLANEOUS No.22746 of 2016

Arising Out of PS. Case No.-1465 Year-2013 Thana- MUZFFARPUR COMPLAINT

CASE District- Muzaffarpur

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1. Nazia Fathima, wife of Saddam Ahmed @ Saddam Hussain, Daughter of Mr. Reyaz Ahmed.
2. Md. Reiaz Ahmed, son of Late Safi Ahmed
3. Nazeera Bano, wife of Md. Rayaz Ahmed
4. Sakiya Azmi, Daughter of Md. Reyaz Ahmed
5. Nadeem Ahmed, son of Md. Reyaz Ahmed.

All resident of Door No. 223, “Ashirwad” B.M. Sri Kantaiaha Road, New Raghavendraswamy Temple, S.S. Puram Post, Tumkur, District –Tumkur, Karnataka.

... .. Petitioners

Versus

1. The State of Bihar
2. Sehnaz Ahmed, W/o Moinuddin Ahmed, resident of Neesha Building, Haalsahebki Kothi, Mohalla – Chandwara, P.S. - Nagar, District – Muzaffarpur.

... .. Opposite Parties

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Code of Criminal Procedure, 1973—Section 482—Quashing—Complaint Case—cognizance under Sections 323 and 379 of IPC—a criminal case was lodged by petitioner No. 1 against O. P. No. 2 and her family members, prior to complaint case, which was filed by O.P. No. 2—complaint case was not supported by an affidavit—no efforts were made by O.P. No. 2 to inform the higher officials regarding the occurrence—following the principles of Priyanka Srivastava’s case; and guidelines No. 7 of Bhajan Lal’s case cognizance Order with all its consequential proceedings set aside and quashed—application allowed.

(Paras 12 to 14)

(2015)6 SCC 287; (1992) Suppl. (1) SCC 335—Relied upon.

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Building, Haalsahebki Kothi, Mohalla – Chandwara, P.S. - Nagar,
District – Muzaffarpur. **Opposite Parties**

Appearance :
For the Petitioners : Mr.Anisur Rahman, Advocate
For the State : Mr.Surendra Kumar, APP
For the O.P. No.2 : Mr.Sanjeev Kumar, Advocate

CORAM: HONOURABLE MR. JUSTICE CHANDRA SHEKHAR JHA
ORAL JUDGMENT

Date : 16-04-2024

Heard learned counsel for the petitioners and
learned A.P.P. for the State duly assisted by learned counsel
for the opposite party no. 2.

2. This application has been filed to quash the
order dated 19.02.2015 passed by learned Judicial
Magistrate - 1st Class, Muzaffarpur in connection with
Complaint Case No. 1465/2013/Tr. No. 4298/2015 whereby
learned Magistrate has taken cognizance against the



petitioners under Sections 323 and 379 of the Indian Penal Code (in short the "I.P.C.").

3. The brief facts of the case is that on 09.06.2013 at 7:00 p.m., all the accused persons-petitioners reached at the house of the complainant and said that they will stay for the night as to discuss regarding compromise, whereafter, complainant went to prepare snacks for them being relative. Thereafter, accused no. 1 (petitioner no. 2) said the husband of the complainant that his family is bad as daughter of the complainant has performed love marriage. On protest, petitioner no. 2 threw the husband of the complainant on the ground and assaulted him with kicks and punches, due to which he got injured. It is further alleged that while the complainant tried to intervene, she was also assaulted and her golden chain worth Rs. 70,000/- was also snatched by petitioner no. 1. Petitioner no. 3 took her ear rings worth Rs. 40,000/-. It is further alleged that rest accused persons (petitioner no. 2 & 3) taken away a suitcase containing jewelry and cash of Rs. 50,000/-.

4. Learned counsel appearing on behalf of the



petitioners submitted that allegation leveled against the petitioners is completely false, baseless and misleading. It is pointed out that present is nothing but a false implication brought by opposite party no. 2 against her daughter-in-law and her parents alongwith paternal family members as Petitioner no. 1, out of her matrimonial discord, lodged a complaint case against her husband namely, Saddam Hussain, who is son of O.P. No. 2, while residing together at Bangalore, which was registered with Women Police Station, Halasuru Gate, Bangalore City as Criminal No. 42/2012 dated 21.04.2012 for the offence under Section 498-A of the I.P.C. and Section 3 and 4 of the Dowry Prohibition Act. It is pointed out that present allegation was raised with oblique and ulterior motive in very planned and formulated manner, which is nothing but a malicious prosecution against the petitioners.

5. It is further submitted by learned counsel that the present complaint case was lodged in order to create pressure as to compromise with aforesaid criminal case as lodged against son of O.P. No. 2. Learned counsel further



submitted that the statement of O.P. No. 2 through her S.A. as no criminal case is pending against her, is also appearing false in view of pendency of aforesaid criminal case lodged by petitioner no. 1 where she is also an accused.

6. Learned counsel further submitted that petitioners are the permanent resident of State of Karnataka and it is highly improbable that all the family members came to Muzaffarpur (Bihar) and committed this type of occurrence and again returned back to her native place at Karnataka

7. While concluding argument, learned counsel further submitted that no efforts appears to be seen on the part of O.P. No. 2 as to approach concerned police station to lodge F.I.R. No steps were taken to inform higher police officials when F.I.R. was refused to lodge by concerned police station. It is further pointed out that the complaint petition is also not supported by affidavit and, as such, the present complaint case, on this score alone in view of legal report of Hon'ble Supreme Court in the matter of **Priyanka Srivastava and Anr. Vs. State of Uttar Pradesh** reported



in **2015 (6) SCC 287** liable to be set-aside. Learned counsel further relied upon **State of Haryana and Ors. Vs. Bhajan Lal and Ors** reported in **(1992) Supp (1) SCC 335**.

8. Learned A.P.P. for the State duly assisted by learned counsel for the opposite party no. 2 opposes the present application.

9. Learned counsel appearing on behalf of O.P. No. 2 submitted that there is specific allegation of snatching of golden chain against petitioner no. 1 & 3, whereas allegation with regard to taking away cash are available against petitioner no. 4 and 5 as also allegation of assault is available against petitioner no. 2.

10. It would be apposite to reproduce paragraph '102' of the legal report of Hon'ble Supreme Court in the case of **Bhajan Lal** (supra), which is being reproduced hereunder for a ready reference:

"**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 Act concerned (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 Act concerned, 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.”

11. It would also be apposite to reproduce paragraph **‘30’ and ‘31’** of the legal report of Hon’ble Supreme Court in the case of **Priyanka Srivastava** (supra), which is being reproduced hereunder for a ready reference:

“30. In our considered opinion, a stage has come in this country where Section 156(3) Cr.P.C. applications are to be supported by an affidavit duly sworn by the applicant who seeks the invocation of the jurisdiction of the Magistrate. That apart, in an appropriate case, the learned Magistrate would be well advised to verify the truth and also can verify the veracity of the allegations. This affidavit can make the applicant more responsible. We are compelled to say so as such kind of applications are being filed in a routine manner without taking any responsibility whatsoever only to harass certain persons. That apart, it becomes more disturbing and alarming when one tries to pick up people who are passing orders under a statutory provision which can be challenged under the framework of said Act or under Article 226 of the Constitution of India. But it cannot be done to take undue advantage in a criminal court as if somebody is determined to settle the scores.

31. We have already indicated that there has to be prior applications under Section 154(1) and 154(3) while filing a petition under Section 156(3). Both the aspects should be clearly spelt out in the application and necessary documents to that effect



shall be filed. The warrant for giving a direction that an the application under Section 156(3) be supported by an affidavit so that the person making the application should be conscious and also endeavour to see that no false affidavit is made. It is because once an affidavit is found to be false, he will be liable for prosecution in accordance with law. This will deter him to casually invoke the authority of the Magistrate under Section 156(3). That apart, we have already stated that the veracity of the same can also be verified by the learned Magistrate, regard being had to the nature of allegations of the case. We are compelled to say so as a number of cases pertaining to fiscal sphere, matrimonial dispute/family disputes, commercial offences, medical negligence cases, corruption cases and the cases where there is abnormal delay/laches in initiating criminal prosecution, as are illustrated in Lalita Kumari are being filed. That apart, the learned Magistrate would also be aware of the delay in lodging of the FIR."

12. In view of the aforesaid factual and legal submissions as aforesaid, it appears that prior to lodging this complaint case, criminal case was lodged by petitioner no. 1, being daughter-in-law of O.P. No. 2 for the offence under Section 498-A of the I.P.C. in April, 2012. Both families were living in Karnataka. It appears that O.P. No. 2 originally belongs from Bihar, whereas petitioners are the permanent resident of State of Karnataka. The present case was lodged after lodging the criminal case against O.P. No. 2 and her family members by petitioner no. 1 at Karnataka.



No efforts appear to be made by O.P. No. 2 to inform the higher officials regarding the occurrence. Furthermore, the complaint is also not appears supported by an affidavit.

13. Accordingly, by taking guiding note of the judgments of Hon’ble Supreme Court in the cases of **Priyanka Srivastava** (supra) and also of **Bhajan Lal** case (supra), particularly guideline No. (7), the impugned order of cognizance dated 19.02.2015 passed by learned Judicial Magistrate - 1st Class, Muzaffarpur in connection with Complaint Case No. 1465/2013/Tr. No. 4298/2015 with all its consequential proceedings are hereby set-aside and quashed.

14. The application stands allowed.

15. Let a copy of this judgment be sent to learned trial court forthwith.

(Chandra Shekhar Jha, J.)

Rajeev/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	18.04.2024
Transmission Date	18.04.2024

