

(2018) 04 PAT CK 0119

In the Patna High Court

Case No : Criminal Miscellaneous No. 41111 Of 2017

Md. Jamiruddin Ansari @ Md. Jamiruddin And Ors

APPELLANT

Vs

State Of Bihar And Anr

RESPONDENT

Date of Decision : 20-04-2018

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 190, 200, 202, 482
Indian Penal Code, 1860 — Section 34, 323, 341, 379, 498(A), 504, 506
Dowry Prohibition Act, 1961 — Section 3, 4

Citation : (2018) 3 PLJR 51

Hon'ble Judges : Ashwani Kumar Singh, J

Bench : Single Bench

Advocate : Md. Rahamatullah, Md. Anamul Haque, Jharkhandi Upadhyay,
Kuldeep Kumar

Final Decision : Allowed

Judgement

1. Heard learned counsel for the petitioners and learned counsel appearing for the complainant/opposite party no. 2

2. This application under Section 482 of the Code of Criminal Procedure (for short "CrPC") has been filed by the petitioners for quashing the

order dated 09.02.2017 passed in C. A. No. 656C of 2016 by the learned Chief Judicial Magistrate, Supaul by which he has summoned the petitioners

to face trial for the offences punishable under Sections 341, 323, 379 and 504/34 of the Indian Penal Code (for short "IPC").

3. The case of the complainant as per the complaint is that on 11.08.2016, the opposite party no. 2 filed a complaint petition in the court of learned

Chief Judicial Magistrate, Supaul in which he has stated that petitioner no. 1 Md. Jamiruddin Ansari is a PDS dealer and has not distributed food

grains and kerosene oil to the beneficiaries including him since the month of

February and sold out the same in black market. He has further alleged that since a complaint in this regard was made to the Mukhiya of the Panchayat, namely, Feku Sharma and having learnt the same, the petitioner no. 1 Jamiruddin Ansari @ Md. Jamiruddin became annoyed and because of that on the date of occurrence all the accused persons being variously armed with deadly weapons entered into the courtyard of the complainant and started hurling filthy abuses. Upon exhortation made by petitioner no. 1 Jamiruddin Ansari, all other accused persons assaulted the informant. They also snatched Rs.10,000/- from the pocket of opposite party no. 2 on the point of pistol. The accused persons took away ornaments, clothes, mobile phone, etc. also. It has also been alleged that a panchayati was convened but even in the panchayati, no solution could emerge. Thereafter, the complainant moved to SHO, Kishanpur Police Station, but he advised him to file complaint in the court.

4. On the basis of aforesaid allegations made in the complaint filed under Section 200 of the CrPC, learned Magistrate took cognizance of the offences under Sections 341, 323, 379 and 504/34 of the IPC in exercise of the powers under Section 190 of the CrPC and proceeded for inquiry under Section 202 of the CrPC.

5. In course of inquiry, statements of altogether four witnesses including the complainant were recorded whereafter the petitioners were summoned to face trial for the offences under which prima facie case was found to be made out.

6. Assailing the impugned order dated 09.02.2017, learned counsel for the petitioners submitted that the statements of the complainant and witnesses are not consistent. They have tried to maliciously prosecute the petitioners in a false and concocted case. He submitted that from the deposition of the witnesses, it would be manifest that though the occurrence is said to have been committed on 29.07.2016, the complaint has been filed after a

sufficiently long time on 11.08.2018 for which no valid reason was given. Lastly, he submitted that opposite party no. 2 is Samdhi of petitioner no. 1 as

marriage of his daughter, namely, Saida Khatoon was solemnized with the son of the complainant, namely, Ziyaul Haque. Since daughter of petitioner

no. 1 was being tortured due to non-fulfillment of demand of dowry and was ousted from her matrimonial home, she had lodged an FIR vide Mahila P.

S. Case No. 77 of 2016 under Sections 341, 323, 498-A, 504 and 506 read with

34 of the IPC and 3 and 4 of the Dowry Prohibition Act on 05.08.2016

against her husband as well as in-laws and in order to put pressure and blackmail the daughter of petitioner no. 1, the complainant (opposite party no.

2) after institution of the aforesaid Mahila P. S. Case No. 77 of 2016 filed the instant complaint against the petitioners.

7. Per contra, learned counsel appearing for the complainant (opposite party no. 2) submitted that there is no truth behind the allegation that the

complaint has been instituted maliciously. He submitted that it is true that the petitioner no. 1 is Samadhi of the complainant but it does not mean that

the complainant would be debarred from filing a complaint against his own Samadhi even if he has committed offences punishable under the penal

code. According to him, petitioner no. 1, a PDS dealer, had defaulted in delivering food grains among the local persons including the complainant for

the last six months and for that reason on the basis of complaint of the complainant, his license had also been cancelled. He submitted that the

witnesses examined in course of inquiry conducted under Section 202 of the CrPC have fully supported the case of the complainant and, thus, no

illegality can be found with the order passed by the court below whereby the petitioners have been summoned to face trial.

8. In reply, learned counsel for the petitioners submitted that the order of cancellation of licence of PDS dealership of the petitioner no. 1 on the basis

of complaint of the complainant was challenged before this Court and vide order dated 02.05.2017 passed in CWJC No. 1895 of 2017, a Bench of this

Court had already set aside the order of cancellation of licence passed by the Sub- divisional Officer holding therein that the decision was taken

without application of mind.

9. I have heard learned counsel for the parties and perused the record.

10. It has rightly been pointed out by the learned counsel for the petitioners that from the deposition of witnesses, it would be manifest that the alleged

occurrence of hurling abuses by the accused persons and causing assault, etc. had taken place on 29.07.2016. Though a vague statement has been

made that a panchayati was also convened, no date of panchayati has been mentioned. Similarly, though it is stated that the complainant had gone to

the police station to lodge FIR but he was advised to file complaint, neither any date of visiting the police has been mentioned in the complaint nor

there is any material to suggest that he had ever approached the police for institution of FIR before filing the complaint. It is admitted by the complainant that the complaint was filed belatedly. However, I do not find any plausible explanation for instituting the complaint after a delay of more than 12 days as occurrence of offence had allegedly taken place on 29.07.2016, but the complaint was filed on 11.08.2016. I also find force in the submission of learned counsel for the petitioners that the complaint has been filed just in retaliation of the police case instituted by the daughter of the petitioner no. 1, namely, Saida Khatoon against the complainant and others. It would be manifest from the FIR as contained in Annexure-2 to the present application that Saida Khatoon had instituted Mahila P. S. Case No. 77 of 2016 inter alia under Section 498-A of the IPC and Section 3 and 4 of the Dowry Prohibition Act on 05.08.2016 against the complainant, his son and other family members and after a lapse of five days, the instant complaint has been filed on 11.08.2016. Apparently, the criminal proceeding has been launched maliciously by the complainant in order to put pressure on the daughter of petitioner no. 1 who has lodged a case prior in time. Another important aspect in the present case is that there is allegation that the accused persons were variously armed with deadly weapons and they assaulted the informant on exhortation made by the petitioner no. 1, but no medical report has been filed with the complaint. It is not even stated as to whether the informant was taken to any doctor for treatment.

11. Section 482 of the CrPC reads as follows:-

482. Saving of inherent powers of High Court. Nothing in this Code shall be deemed to limit or affect the inherent powers of the High Court to make such orders as may be necessary to give effect to any order under this Code, or to prevent abuse of the process of any Court or otherwise to secure the ends of justice.

12. Section 482 of the CrPC envisages three circumstances under which the inherent jurisdiction may be exercised :-

- (i) to give effect to an order under the CrPC;
- (ii) to prevent abuse of the process of court;
- (iii) to otherwise secure ends of justice.

13. In R. P. Kapur vs. the State of Punjab [AIR 1960 SC 866], the Supreme Court observed that even though the inherent jurisdiction of the High

Court under Section 482 is very wide, it has to be exercised sparingly, carefully with caution and only when such exercise is justified by the tests

specifically laid down in the section itself. It is to be exercised *ex debito justitiae* to do real and substantial justice for the administration of which alone

court exist.

14. In *State of Haryana and Ors. vs. Ch. Bhajan Lal and Ors* [AIR 1992 SC 604], the Supreme Court judicially recognized certain grounds for

exercising the power under Section 482 of the CrPC. One of the grounds enumerated therein is 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 the court would be justified in exercising the power under Section 482 of the CrPC.

15. In the instant case, institution of the complaint itself *prima facie* appears to be an abuse of the process of law. The complainant, father-in-law of

the daughter of petitioner no. 1 along with his son is facing a criminal case relating to dowry demand and subjecting a married woman to cruelty and in

retaliation the instant complaint has been filed.

16. In my considered opinion, in order to do real and substantial justice for the administration of which alone the court exist, it is expedient that the

proceeding against the petitioners which has maliciously been instituted with an ulterior motive for wreaking vengeance with a view to spite them due

to private and personal grudge be quashed.

17. Accordingly, the complaint case vide C. A. No. 656C of 2016 including the order dated 09.02.2017 passed by the learned Chief Judicial

Magistrate, Supaul in the said case is hereby quashed. The application stands allowed.