
(2019) 02 PAT CK 0040

In the Patna High Court

Case No : Criminal Miscellaneous No. 47021 Of 2014

Sahid @ Sahid Sah @ Md. Sayed Sah, S/O Late Kafil Sah

APPELLANT

Vs

State Of Bihar

RESPONDENT

Date of Decision : 26-02-2019

Acts Referred:

Code of Criminal Procedure, 1973 — Section 482

Citation : (2019) 02 PAT CK 0040

Hon'ble Judges : Ahsanuddin Amanullah, J

Bench : Single Bench

Advocate : Raj Kumar, Vijay Kumar, Anil Prasad Singh

Final Decision : Allowed

Judgement

1. Heard learned counsel for the petitioners; learned A.P.P. for the State and learned counsel for the opposite party no. 2.

2. By order dated 11.02.2019, the Court required the petitioner no. 7 and opposite party no. 2, who are wife-husband, to be present in Court today. The order was passed at the behest of learned counsel for the parties. However, today only the opposite party no. 2 is present whereas, petitioner no. 7 is not present.

3. The Court deprecates such action and could have taken judicial note and passed strict orders. However, by way of indulgence, it refrains from doing so.

4. The petitioners have moved the Court under Section 482 of the Code of Criminal Procedure, 1973 (hereinafter referred to as the 'Code') for the following relief:

"That this is an application for quashing against the order dated 05.05.2014 passed by Learned Sub- Divisional Judicial Magistrate, Araria whereby and whereunder he has been pleased to take cognizance against the petitioners in complain case No. 3159C/13 for the offence punishable under Section 323, 341,

379 of Indian Penal Code in most arbitrary and illegal manner."

5. The allegation against the petitioners is that in the absence of the opposite party no. 2, they had come to his house on 29.04.2013 at about 11.00 A.M, when only the mother of the opposite party no. 2 and the petitioner no. 7 were in the house. It is alleged that the petitioners abused and assaulted the mother of the opposite party no. 2 with fists and slaps and with the help of petitioner no. 7, all accused took away ornaments worth Rs. 65,000/-; utensil worth Rs. 10,000/-; clothes worth Rs. 10,000/-and cash Rs. 1,50,000/- and went away on a Magic vehicle taking away the petitioner no. 7 with them on the pretext of her mother being ill. It was further stated in the complaint that the petitioner no. 7 even after marriage did not prefer to live in the matrimonial home and frequently used to come to her parent's home and did not return and rather used to say that Rs. 1,50,000/- kept by the opposite party no. 2 for constructing the house should be brought by him to the parental place of the petitioner no. 7 and that the opposite party no. 2 should live with her.

6. Learned counsel for the petitioners submitted that the present case is totally false and in fact a counterblast to the earlier case filed by the petitioner no. 7 against the opposite party no. 2 and his family members. It was submitted that the petitioner no. 7 filed Complaint Case No. 228 of 2012, before the Chief Judicial Magistrate, Purnea on 16.01.2012, whereas the present case has been filed on 16.09.2013. Learned counsel submitted that in the complaint filed by the petitioner no. 7, it is alleged that there was demand of dowry and abuse and torture. Learned counsel submitted that further, as per the allegation, the incident took place on 29.04.2013 and the complaint being filed after four and a half months, the same itself indicates that it has been cooked up. Learned counsel submitted that when the opposite party no. 2 had applied for anticipatory bail before the Court below in connection with Complaint Case No. 228 of 2012, the same was granted on the condition that he would take the petitioner no. 7 and keep her in the matrimonial home. In terms thereof, it was submitted that petitioner no. 7 is now living in the matrimonial home since the year 2014, without any complaint and that they have been blessed with three children also. Thus, learned counsel submitted that the allegation that the petitioner no. 7 did not want to reside in the matrimonial home stands falsified and it was the opposite party no. 2 and his family members who were responsible for not treating the petitioner no. 7, the way it was required. Learned counsel further submitted that in view of there being differences between the parties and the fact that the petitioner no. 7 had filed Complaint Case No. 228 of 2012, in which she had clearly stated that she was living in her parent's house, the allegation in the present complaint that she was present in the matrimonial home on 29.04.2013, is proved to be false.

7. Learned A.P.P. submitted that though cognizance has been taken after examination of witnesses but from the fact that she is now living in the matrimonial home and has three children, the matter appears to have been

settled.

8. Learned counsel for the opposite party no. 2 submitted that he is ready to compromise the matter but the petitioner no. 7 is not cooperating. At this juncture, on a direct query of the Court as to whether the fact of the petitioner no. 7 living in the matrimonial home and being blessed with three children is correct, learned counsel accepted the said fact. Further, on a direct query of the Court as to when the petitioner no. 7 was living in the matrimonial home since 2014, without any complain and also having three children since then, how could she be said to be not cooperating, moreso, when there is nothing to show that she, by her behaviour had shown such an attitude, learned counsel for the opposite party no. 2 could not give a single instance or controvert such fact.

9. Having considered the facts and circumstances of the case and submissions of learned counsel for the parties, the Court finds that a case for interference has been made out. From the factual background, it is quite clear that the entire story in the complaint case is unbelievable and concocted. First of all, it cannot be believed that seven persons would come, including women, to the village and house of the opposite party no. 2 and commit such crime knowing fully well that villagers in the place would be favorably disposed to the opposite party no. 2 and, thus, committing such offence cannot be said to be believable. Further, in the background of what has been narrated in the complaint that articles and money were taken away and the inmates were tied, then it cannot be believed that the accused would offer an explanation for taking away the petitioner no. 7 that her mother was ill. There was no occasion for them to give any explanation when they had committed such crime and had tied up the mother of the opposite party no. 2. This shows that the complaint is not fit to be believed. Further, the entire background, as has been narrated in the complaint is that the petitioner no. 7 did not want to live in the matrimonial home. This fact also stands falsified, as, since 2014, she is not only living in the matrimonial home without any complain but in fact has also been blessed with three children.

Thus, taking an overall view, in the considered opinion of the Court, the present case, as has rightly been submitted by learned counsel for the petitioners, is a counterblast to Complaint Case No. 228 of 2012, filed by the petitioner no. 7 against the opposite party no. 2 and his family members.

10. In this connection, the Court would refer to the judgment of the Hon'ble Court in State of Haryana vs. Bhajan Lal reported as 1992 Supp (1) SCC 335, where at paragraph no. 102 categories have been enumerated where the Court should interfere under its inherent powers under Section 482 of the Code. The same 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 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."

11. The present, in the opinion of the Court stands covered under categories 5 and 7 of the aforesaid decision of the Hon'ble Supreme Court in the case of Bhajan Lal (supra) at paragraph no. 102.

12. For reasons aforesaid, the Court finds that the present prosecution is totally mala fide with a view to harass the petitioners.

13. Accordingly, the application is allowed. The Complaint Case No. 3159 (C) of 2013 as well as its entire proceedings stand quashed.