

IN THE HIGH COURT OF JUDICATURE AT PATNA

Mahendra Sah & Ors.

v

State of Bihar & Anr.

Criminal Miscellaneous No. 9472 of 2017

20 September 2023

(Honourable Mr. Justice Mohit Kumar Shah)

Issue for Consideration

Whether the order, taking cognizance under Sections 498A and 379 IPC against the petitioners, was sustainable in law when the complaint contained only omnibus allegations without specific roles attributed to the petitioners.

Headnotes

Order dated 03.01.2017, by which cognizance has been taken by the learned court below as far as the petitioners are concerned, is perverse and has been passed in a mechanical manner without any application of mind, as also without considering the prevalent law on the subject-matter apart from it not having considered the nature of allegations levelled against the individual accused persons including the petitioners herein, and hence is required to be quashed. - A bare perusal of the complaint petition would show that the allegations levelled therein do not prima facie constitute any offence, in order to make out a case as against the petitioners. (Para 8, 9)
Petition is allowed. (Para 11)

Case Law Cited

Preeti Gupta v. State of Jharkhand, (2010) 7 SCC 667; Geeta Mehrotra v. State of U.P., (2012) 10 SCC 741; Pepsi Foods Ltd. v. Special Judicial Magistrate, (1998) 5 SCC 749; Mahmood Ul Rehman v. Khazir Mohammad Tunda, (2015) 12 SCC 420

List of Acts

Indian Penal Code, 1860 – Sections 498A and 379; Code of Criminal Procedure, 1973 – Section 482

List of Keywords

Quashing of cognizance; Dowry harassment; Omnibus allegations; Abuse of process; Criminal trial against in-laws; Mechanical order of Magistrate

Case Arising From

Complaint Case No. 941 of 2016 (Trial No. 702 of 2017), P.S. Rohtas, District Rohtas.

Appearances for Parties

For the Petitioner/s: Mr. Jitendra Prasad Singh, Mr. Rajeev Kumar,

For the Opposite Party/s: Mr. Bharat Bhushan, APP

For Opposite Party No. 2: Mr. Ajay Nandan Sahar, Mr. Rajnish Kumar Mishra, Advocates

Headnotes Prepared by Reporter: Amit Kumar Mallick, Adv.

Judgment/Order of the Hon’ble Patna High Court

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No. 9472 of 2017

Arising Out of PS. Case No.-941 Year-2016 Thana- ROHTAS COMPLAINT CASE District-
Rohtas

- =====
1. Mahendra Sah Son of Late Hira Sah.
 2. Kusum Devi @ Kusum Kumari, Wife of Mahendra Sah.
 3. Praveen Shashi.
 4. Neeraj Shashi, both are sons of Mahendra Sah.
 5. Nilam Shashi, Daughter of Mahendra Sah and Wife of Manoj Kumar,
 6. Veena Devi @ Veena Kumari, Wife of Praveen Shashi. All are Resident of Ramgarh Cant in front of Ishar Patrol Pump, Pratap Nagar Nai Saray, P.S. and District Ramgarh Jharkhand.

... .. Petitioner/s

Versus

1. State Of Bihar
2. Kanchan Kumari, Daughter of Sri Hira Lal Prasad & Wife of Pankaj Shashi, at present Resident of Gola Road, Nokha near Sadar Hospital, P.S. Nokha, District- Rohtas.

... .. Opposite Party/s

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Appearance:

For the Petitioner/s	:	Mr. Jitendra Prasad Singh, Advocate
	:	Mr. Rajeev Kumar, Advocate
For the Opposite Party/s	:	Mr. Sri Bharat Bhushan, APP
For the Opposite Party No.2:	:	Mr. Ajay Nandan Sahar, Advocate
	:	Mr. Rajnish Kr. Mishra, Advocate

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CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH

ORAL JUDGMENT

Date: 20-09-2023

1. The present petition has been filed for quashing the order dt. 3.1.2017, passed by the Additional Chief Judicial Magistrate, Sasaram (Rohtas), in connection with Complaint case no. 941 of 2016 (Trial No. 702 of 2017), whereby and whereunder cognizance has been taken against the petitioners and others



under Sections 498(A) and 379 of the Indian Penal Code.

2. The case of the prosecution in brief, according to the complainant-opposite party no. 2 is that her marriage was solemnized on 11.03.2011 with one Pankaj Shashi as per Hindu rites and rituals, during the course whereof, the parents of the opposite party no. 2 had given a sum of Rs. 3 lacs in cash by way of dowry, however, the accused persons had been demanding jewellery, nonetheless, the opposite party no. 2 had gone to her matrimonial home and after some time, the accused persons started pressurizing the opposite party no. 2 to ask her father to pay a sum of Rs. 3 lacs and jewellery by way of dowry, however, upon refusal to do so, they started harassing and beating her. It has also been stated in the complaint petition that the opposite party no. 2 was of the view that with passage of time, the situation would improve, however the accused persons did not stop harassing her and on 15.02.2015, they had tried to kill her by pouring kerosene oil on her body, however, upon alarm being raised, the neighboring people and police had arrived, whereafter a compromise was arrived at in between the opposite party no. 2 and the accused persons and then the opposite party no. 2 had again gone to her matrimonial home. It is next alleged that after few days, the accused persons again



started harassing the opposite party no. 2 and on 07.08.2016, they had beaten her as also snatched her jewellery and clothes, whereafter the husband of the opposite party no. 2 and others had made her forcibly sit in a car, taken her to an unknown place and dropped her there, whereafter they had fled away, however, somehow she had reached her parental home.

3. The learned counsel for the petitioners has submitted that as far as the petitioners are concerned, petitioner no. 1 is the father-in-law of the opposite party no. 2 while petitioner no. 2 is the mother-in-law, petitioners no. 3 and 4 are brothers-in-law and petitioners no. 5 and 6 are sisters-in-law of the opposite party no. 2 and they do not have any role to play in the alleged occurrence. It is also submitted that the incident in question is a dispute in between the husband and wife i.e. the opposite party no. 2 and her husband namely Pankaj Shahi. It is also submitted that the petitioners are living separately from the opposite party no. 2 and her husband, hence, they are not having any role to play in the alleged occurrence, nonetheless, no specific allegation has been levelled in the complaint petition *qua* them. It is next contended by the learned counsel for the petitioners that the learned court below has taken cognizance against the petitioners in a mechanical manner and without application of



judicial mind, hence the same is required to be set aside.

4. *Per contra*, the learned APP for the State and the learned counsel for the opposite party no. 2 have though vehemently opposed the present petition, however, they have not been able to show that any specific role has been attributed to the petitioners in the alleged occurrence and on the contrary, they have admitted that the impugned order dated 03.01.2017 is a cryptic order and does not depict that any material is available *qua* the petitioners herein so as to warrant taking cognizance of the offences alleged, whereas the same has been passed in a mechanical manner without any application of mind.

5. I have heard the learned counsel for the parties and perused the materials on record.

6. At this juncture, it would be relevant to refer to a judgment rendered by the Hon'ble Apex Court in the case of ***Preeti Gupta vs. State of Jharkhand, reported in 2010(7) SCC 667***, paragraph nos. 21, 23 to 26, 29, 32, 34, 35 and 39, whereof are reproduced herein below:-

“21. This Court in State of Karnataka v. L. Muniswamy observed that the wholesome power under Section 482 CrPC entitles the High Court to quash a proceeding when it comes to the conclusion that allowing the proceeding to continue would be an



abuse of process of court or that the ends of justice require that the proceeding ought to be quashed. The High Courts have been invested with inherent powers, both in civil and criminal matters, to achieve a salutary public purpose. A court proceeding ought not to be permitted to degenerate into a weapon of harassment or persecution. In this case, the Court observed that ends of justice are higher than the ends of mere law though justice must be administered according to laws made by the legislature. This case has been followed in a large number of subsequent cases of this Court and other courts.

23. *This Court in Madhavrao Jiwajirao Scindia v. Sambhajirao Chandrojirao Angre observed in SCC para 7 as under: (SCC p. 695)*

“7. The legal position is well settled that when a prosecution at the initial stage is asked to be quashed, the test to be applied by the court is as to whether the uncontroverted allegations as made prima facie establish the offence. It is also for the court to take into consideration any special features which appear in a particular case to consider whether it is expedient and in the interest of justice to permit a prosecution to continue. This is so on the basis that the court cannot be utilised for any oblique purpose and where in the opinion of the court chances of an ultimate conviction are bleak and, therefore, no useful purpose is likely to be served by allowing a criminal prosecution to continue, the court may while taking into consideration the special facts of a case also quash the proceeding even though it may be at a preliminary stage.”

24. *In State of Haryana v. Bhajan Lal, this Court in the backdrop of interpretation of various relevant*



provisions of the Code of Criminal Procedure (for short "CrPC") 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 of the Constitution of India or the inherent powers under Section 482 CrPC gave the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of process of court or otherwise to secure the ends of justice. Thus, this Court made it clear that it may not be possible to lay down any precise, clearly defined and sufficiently channelised & inflexible guidelines or rigid formulae and to give an exhaustive list to 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 & 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.”



25. *In G. Sagar Suri v. State of U.P., this Court observed that it is the duty and obligation of the criminal court to exercise a great deal of caution in issuing the process particularly when matters are essentially of civil nature.*

26. *This Court, in Zandu Pharmaceutical Works Ltd. v. Mohd. Sharaful Haque, observed thus:*

“8. ... It would be an abuse of process of court to allow any action which would result in injustice and prevent promotion of justice. In exercise of the powers, court would be justified to quash any proceeding if it finds that initiation/continuance of it amounts to abuse of the process of court or quashing of these proceedings would otherwise serve the ends of justice. When no offence is disclosed by the complaint, the court may examine the question of fact. When a complaint is sought to be quashed, it is permissible to look into the materials to assess what the complainant has alleged and whether any offence is made out even if the allegations are accepted in toto.”

29. *Admittedly, Appellant 1 is a permanent resident of Navasari, Surat, Gujarat and has been living with her husband for more than seven years. Similarly, Appellant 2 is a permanent resident of Goregaon, Maharashtra. They have never visited the place where the alleged incident had taken place. They had never lived with Respondent 2 and her husband. Their implication in the complaint is meant to harass and humiliate the husband's relatives. This seems to be the only basis to file this complaint against the appellants. Permitting the complainant to pursue this complaint would be an abuse of the process of law.*



32. *It is a matter of common experience that most of these complaints under Section 498-A IPC are filed in the heat of the moment over trivial issues without proper deliberations. We come across a large number of such complaints which are not even bonafide and are filed with oblique motive. At the sametime, rapid increase in the number of genuine cases of dowry harassment is also a matter of serious concern.*

34. *Unfortunately, at the time of filing of the complaint the implications & consequences are not properly visualized by the complainant that such complaint can lead to insurmountable harassment, agony and pain to the complainant, accused and his close relations.*

35. *The ultimate object of justice is to find out the truth and punish the guilty and protect the innocent. To find out the truth is a Herculean task in majority of these complaints. The tendency of implicating the husband and all his immediate relations is also not uncommon. At times, even after the conclusion of the criminal trial, it is difficult to ascertain the real truth. The courts have to be extremely careful and cautious in dealing with these complaints and must take pragmatic realities into consideration while dealing with matrimonial cases. The allegations of harassment of husband's close relations who had been living in different cities and never visited or rarely visited the place where the complainant resided would have an entirely different complexion. The allegations of the complainant are required to be scrutinised with*



great care and circumspection.

39. When the facts and circumstances of the case are considered in the background of legal principles set out in the preceding paragraphs, then it would be unfair to compel the appellants to undergo the rigmarole of a criminal trial. In the interest of justice, we deem it appropriate to quash the complaint against the appellants. As a result, the impugned judgment of the High Court is set aside.

Consequently, this appeal is allowed.”

7. This Court would also refer to a judgment rendered by the Hon’ble Apex Court in the case of ***Geeta Mehrotra & Anr. vs. State of Uttar Pradesh & Anr.***, reported in ***(2012) 10 SCC 741***.

8. This Court finds that the impugned order dated 03.01.2017, passed by the learned Trial court, whereby and whereunder cognizance has been taken under Sections 498(A) and 379 of the Indian Penal Code, has been passed mechanically without any application of mind, as also without considering the prevalent law on the subject-matter apart from it not having considered the nature of allegations levelled against the individual accused persons including the petitioners herein. It is further apparent from the records of the case that the petitioners herein are the in-laws of the opposite party no. 2 (complainant), living separately and at a different place, having nothing to do



with the affairs of the opposite party no. 2 / her husband, which is apparent from the facts of the case and moreover, no specific allegation of any assault, abuse or demand of dowry has been made *qua* the petitioners herein nor it has been explained as to how, where and when the petitioners had tortured the opposite party no. 2 or demanded dowry from her and on the contrary, I find that only a general and omnibus allegation has been levelled against the petitioners by the opposite party no. 2, obviously with oblique motives and probably with a view to increasing the bargaining power.

9. Considering the facts and circumstances of the case, as also the law laid down by the Hon'ble Apex Court in the Case of ***Preeti Gupta (supra) and Geeta Mehrotra (supra)***, this Court finds that it would be unfair to compel the petitioners herein to undergo the rigors of a criminal trial and even otherwise, I find that the order dated 03.01.2017, by which cognizance has been taken by the learned court below as far as the petitioners are concerned, is perverse and has been passed in a mechanical manner without any application of mind, hence, is required to be quashed. Reference in this connection be had to the judgment rendered by the Hon'ble Apex Court in the case of ***Pepsi Foods Ltd. v. Special Judicial Magistrate***, reported in (1998) 5 SCC



749 as also the one rendered in the case of *Mehmood Ul Rehman v. Khazir Mohammad Tunda, reported in (2015) 12 SCC 420*. In any view of the matter, a bare perusal of the complaint petition would show that the allegations levelled therein do not *prima facie* constitute any offence, in order to make out a case as against the petitioners.

10. Having regard to the facts and circumstances of the case and for the reasons mentioned hereinabove, I deem it fit and proper to quash the order dated 03.01.2017, passed by the Additional Chief Judicial Magistrate, Sasaram (Rohtas), in connection with Complaint case no. 941 of 2016 (Trial No. 702 of 2017) *qua* the petitioners herein.

11. The present petition stands allowed.

(Mohit Kumar Shah, J)

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CAV DATE	NA
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