

CRIMINAL MISCELLANEOUS No.25255 OF 2003

In the matter of an application under Section
482 of the Code of Criminal Procedure, 1973.

1. KRISHNA KUMAR SHARMA, SON OF LATE BRAHMDUTTA SHARMA
2. GOVANA KUMAR SHARMA
3. MANMIT KUMAR SHARMA, BOTH SONS OF SHRI KRISHNA KUMAR SHARMA, ALL RESIDENT OF MOHALLA BARA BAZAR, P.S. TOWN, DISTRICT DARBHANGA.

...

... PETITIONERS.

Versus

1. THE STATE OF BIHAR
2. SMT. JYOTI DEVI, WIFE OF GOPAL SHARMA, RESIDENT OF MOHALLA HASSANCHAK, P.S. TOWN DISTRICT DARBHANGA.
3. ANAND KUMAR SHARMA,
4. VIJAY KUMAR SHARMA, BOTH SONS OF LATE BRAHMDUTTA SHARMA.
5. PAWAN KUAMR SHARMA, SON OF SHRI NIRANJAN MAHARAJ, ALL 3 TO 5 RESIDENT OF MOHALLA BARA BAZAR, P.S. TOWN, DISTRICT DARBHANGA.
6. PRADEEP SHARMA, SON OF LATE ISHWAR CHANDRA SHARMA, RESIDENT OF MOHALLA HASSAN CHAK, P.S. TOWN, DISTRICT DARBHANGA.

...

... OPPOSITE PARTIES.

For the Petitioners : M/S Arvind Kumar Verma, Adv.
Manoj Kumar Singh, Adv.
For the State : Mr. A.M.P. Mehta, A.P.P.

P R E S E N T

THE HON'BLE MR. JUSTICE RAKESH KUMAR

Rakesh Kumar, J. Three petitioner, while invoking
inherent jurisdiction of this Court under
Section 482 of the Code of Criminal
Procedure, have prayed for quashing of an
order dated 23.10.2002/22.10.2002, passed
by the Judicial Magistrate, Ist Class,
Darbhanga in C.R. No.772 of 1998/Tr.
No.2564 of 2002, whereby learned Magistrate

has taken cognizance of the offence under Sections 147, 453 and 380 of the Indian Penal Code against the petitioners and opposite party nos.3 to 6. The petitioners have further prayed to quash an order dated 5.8.2003 passed by learned Sessions Judge, Darbhanga, whereby revision preferred by the petitioners against the order of cognizance was rejected and also petitioners have prayed to quash entire criminal proceeding arising out of C.R. No.772 of 1998/Tr. No.2564 of 2002.

2. Short fact of the case is that opposite party no.2 filed a complaint case in the court of Chief Judicial Magistrate, Darbhanga, which was numbered as Complaint Case No.772 of 1998, against seven named accused persons and ten unknown persons on an accusation of commission of offence under Sections 451, 453, 380, 411, 323, 147 and 148 of the Indian Penal Code. It was alleged by the complainant that on the date of occurrence i.e. 21.6.1998, her husband, elder brother of her husband and her mother-in-law were in judicial custody in connection with Town P.S. Case No.53 of

1998 and her father-in-law and two elder brothers of her husband, had gone outside and since she was alone, she had gone to her maternal auntie's house (Phua's house) after putting a lock on the house. On 21.6.1998 in the morning, she telephonically received information that accused persons were committing loot in her house after breaking lock and door. Thereafter, she immediately rushed to the house of her in-laws and found that all the locks were broken and all the accused persons, with unknown variously armed, were committing loot and loading household articles on a Truck and Station Wagon, which was standing outside the house. On objection being raised by the complainant, the accused persons chased her for assaulting any how, she escaped and from a telephone booth, she informed Shri Motilal Sharma, father-in-law of elder brother of her husband. In the meanwhile, local residents assembled there and started pelting brick bats. Subsequently, a police party arrived there and opened two round of firing. Thereafter, all the accused persons

disappeared along with the looted articles. It was found that several household articles including some ornaments were missing. At the place of occurrence itself, the police recovered Golden Chain, Laucate, Top and one Alvin ladies watch from possession of one of the accused, namely, Vijay Kumar Sharma (Opposite 3rd Party). A seizure list was got prepared and police party thereafter, along with accused Vijay Kumar Sharma took the Truck and Station Wagon loaded with the household properties to the police station after putting a lock on the main door of the house. The complainant was informed by witnesses that the accused persons had already conducted one trip of the looted goods on Station Wagon and goods in the second trip was taken by the police. Despite information given by the complainant to the police, no F.I.R. was lodged and thereafter, the complaint petition was filed. After conducting enquiry, the learned Magistrate, by the impugned order dated 23.10.2002/22.10.2002, took cognizance of the offences under Sections 453, 380 and

147 of the Indian Penal Code and directed for summoning the accused persons including the petitioners. The petitioners, thereafter, filed a criminal revision against the order of cognizance vide Cr. Revision No.619 of 2002, which stood rejected by the learned Sessions Judge by its order dated 5.8.2003.

3. Aggrieved with the order of revisional court, the aforesaid three petitioners approached this Court by filing the present petition. On 23.4.2004, while issuing notice to the opposite party nos.2 to 6, this Court directed that in the meantime, further proceedings in Complaint Case No.772 of 1998 corresponding to Trial No.2564 of 2002 pending before Judicial Magistrate, Darbhanga shall remain stayed and on 28.11.2006, the petition was admitted for hearing and it was also directed that in the meantime, further proceeding in C.R. No.772 of 1998 corresponding to Tr. No.2564 of 2002 pending before the Judicial Magistrate, Ist Class, Darbhanga shall remain stayed and order of stay is still continuing. Though

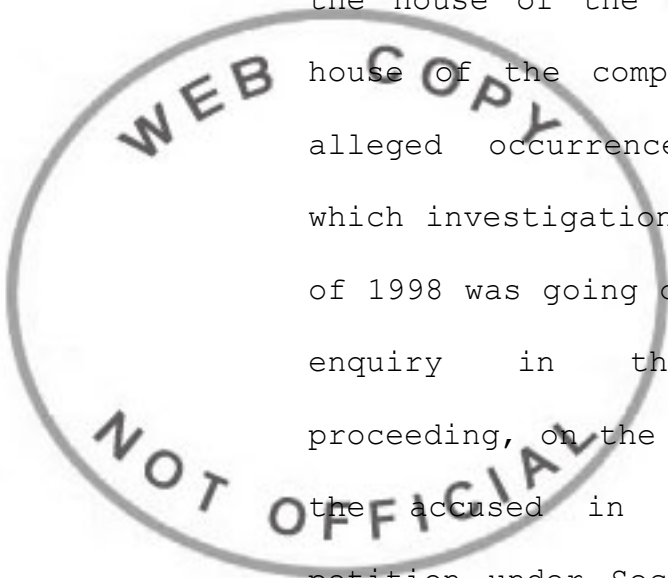
before time of admission of the present petition itself, the opposite party nos.2 to 6 had appeared, neither at the time of admission nor during the hearing of the present petition any one appeared on behalf of opposite party nos.2 to 6.

4. Shri Arvind Kumar Verma, learned counsel for the petitioners, has assailed the entire proceeding in Complaint Case No.772 of 1998 on the ground that the complaint petition was itself filed arbitrarily and maliciously in calculated manner with a view to create a defence as well as to put pressure on the petitioner no.1. On the ground of malicious proceeding, it has been prayed to quash entire proceeding and both the impugned orders. It was submitted that daughter of petitioner no.1 was married to the brother of husband of the complainant on 21.1.1998. Immediately after the marriage, the in-laws of the daughter of the petitioner no.1 as well as in-laws of the complainant started torturing the daughter of the petitioner no.1, both mentally and physically with a view to extract more and more dowry even

after marriage and finally within few months of the marriage, the accused persons killed his daughter and thereafter, threw dead body of his daughter in a pond, which was recovered on 28.5.1998 and on the basis of fardbeyan of the petitioner no.1, which was recorded near the pond in front of Raj High School, Darbhanga at about 6.30 A.M. on 28.5.1998, an F.I.R. was lodged for the offence under Sections 304B and 120B of the Indian Penal Code and Sections 3 and 4 of the Dowry Prohibition Act in which the husband of the complainant, father-in-law, mother-in-law and husband of the deceased daughter of the informant were made accused. It was submitted that on the date of alleged occurrence in the complaint petition i.e. on 21.6.1998, her husband Gopal Sharma, elder brother of her husband, namely, Sanjay Sharma @ Pappu Sharma (husband of the wife of deceased daughter of the informant) and mother-in-law of the complainant were in judicial custody in Town P.S. Case No.53 of 1998. Since remaining accused persons were absconding the police of town police station after

obtaining processes from the court, had gone for executing attachment order and police party while started attachment proceeding, the father-in-law of elder brother of husband of the complainant and other arrived there and created hindrance in execution of the attachment proceeding and thereafter, occurrence had taken place in which several police officials received injury due to pelting brick bat and thereafter, the police was constrained to open two round of firing. Subsequently, the situation could be controlled and attachment proceeding was concluded after preparing the seizure list. During the said occurrence, opposite party no.4, Vijay Kumar Sharma was apprehended by the police and from his possession, Golden Chain, Laucate etc. were recovered for which seizure list was also prepared. In relation to the said occurrence, police registered a separate case vide Town P.S. Case No.62 of 1998 on 21.6.1998 for offence under Sections 147, 448, 353, 380, 411, 420, 332 and 387 of the Indian Penal Code against accused persons including Motilal Sharma,

who was father-in-law of the elder brother of the husband of the complainant of the present case. While investigation in Town P.S. Case No.62 of 1998 as well as investigation in Town P.S. Case No.53 of 1998 (relating to dowry death of daughter of the petitioner no.1) were going on, in a well design manner, the accused persons of Town P.S. Case No.53 of 1998 got the present complaint petition filed after about two months from the date of attachment proceeding, which was held in the house of the accused persons (in-laws house of the complainant). Since for the alleged occurrence dated 21.6.1998 for which investigation in Town P.S. Case No.62 of 1998 was going on, after commencement of enquiry in the present complaint proceeding, on the petition filed by one of the accused in the complaint filed a petition under Section 210 of the Code of Criminal Procedure. The learned Magistrate, in complaint case, had called for the report from police in respect of Town P.S. Case No.62 of 1998, but surprisingly, the learned Magistrate proceeded with the



enquiry in the present complaint petition and rejected the said petition and thereafter, by the impugned order, has taken cognizance of the offences.

5. In view of aforesaid facts and circumstances, Shri Verma, learned counsel for the petitioner, has argued that the entire proceeding being malicious prosecution may be quashed besides quashing the impugned order of cognizance as well as revisional order.

6. Shri A.M.P. Mehta, learned Additional Public Prosecutor even in absence of any representation on behalf of opposite party nos.2 to 6, has strongly supported the impugned order and opposed the prayer of the petitioners.

7. Besides hearing learned counsel for the petitioners and State, I have also perused the materials available on record. After going through the materials on record, the court is in agreement with the submission of learned counsel for the petitioner that the complaint petition was got filed in a calculated manner by the accused persons of Town P.S. Case No.53 of

1998, which was registered for offence under Sections 304B/120B of the Indian Penal Code against husband of the complainant, her father-in-law, mother-in-law and brother of the husband of the complainant. Annexure-1 is the copy of the F.I.R. of Town P.S. Case No.53 of 1998. Even the complainant herself has admitted in her complaint petition that some of the accused persons of Town P.S. case No.53 of 1998 were away from the house and husband of the complainant, elder brother of the husband of the complainant (husband of the deceased daughter of the petitioner no.1) and mother-in-law of the complainant were in judicial custody in Town P.S. Case No.53 of 1998 and date of occurrence in the complaint petition was shown as 21.6.1998, which is the date of occurrence in Town P.S. Case No.62 of 1998 registered on the basis of written application of Sub Inspector of Police of town police station in which it was alleged that on 21.6.1998, they had gone for attaching the property of the accused persons of Town P.S. Case No.53 of 1998 and thereafter, one of the close

relative of the complainant along with others had created un-authorized and illegal hindrance in the attachment proceeding and as such amongst other accused persons, the father-in-law of the elder brother of the husband of the complainant was also made one of the accused in Town P.S. Case No.62 of 1998.

8. Malicious approach in present complaint case is also corroborated from the fact that the complainant had alleged that occurrence had taken place on 21.6.1998. However, she has chosen to file complaint on 12.8.1998 in the court of Chief Judicial Magistrate, Darbhanga and father-in-law of elder brother of the husband of the complainant, namely, Motilal Sharma was shown as one of the witness in support of the complaint petition. From running page-24, internal page-2 of Annexure-3 i.e. copy of the complaint petition in Complaint Case No.772 of 1998, it is evident that Witness No.1 was Shri Motilal Sharma, who was by profession an advocate. During enquiry also, Shri Motilal Sharma was examined as witness in support

of the complaint Fact remains that said Motilal Sharma was made accused in Town P.S. Case No.62 of 1998 relating to occurrence dated 21.6.1998. A copy of F.I.R. in Town P.S. Case No.62 of 1998 has been annexed as Annexure-2 to the petition.

9. The fact, which has emerged from perusal of copy of F.I.R. of Town P.S. Case No.53 of 1998 (Annexure-1) and F.I.R. of Town P.S. Case No.62 of 1998 makes it clear that present complaint was filed maliciously, arbitrarily and with a view to create a defence and as such the entire proceeding in Complaint Case No.772 of 1998 is liable to be set aside. Allowing proceeding in the present complaint to further proceed will amount to allowing abuse of the process of the court.

10. The court is of the opinion that it is a fit case for exercising inherent jurisdiction for preventing abuse of the process of the court and as such both the orders i.e. order dated 23.10.2002/22.10.2002 passed in C.R. No.772 of 1998/Tr. No.2564 of 2002 and order dated 5.8.2003 in Cr. Revision No.619 along with

entire proceeding in C.R. No.772 of
1998/Tr. No.2564 of 2002 are hereby set
aside and petition stands allowed.

(Rakesh Kumar ,J.)

PATNA HIGH COURT
Dated 31st January, 2011
N.A.F.R./N.H.

