

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.35156 of 2012

Arising Out of Complaint.Case No. -2261 Year- 2011 Thana -Hajipur District-
VAISHALI(HAJIPUR)

- =====
1. Vinay Pandey, S/O late Devkinandan Pandey Resident Of Village- Rampur Asura, P.S.- Bhagwanpur, District- Vaishali
 2. Lalit Pandey S/O late Devkinandan Pandey Resident Of Village- Rampur Asura, P.S.- Bhagwanpur, District- Vaishali
 3. Dhira Pandey S/O Vinay Pandey Resident Of Village- Rampur Asura, P.S.- Bhagwanpur, District- Vaishali
 4. Prabhu Nandan Pandey S/O Ram Ishwar Pandey Resident Of Village- Rampur Asura, P.S.- Bhagwanpur, District- Vaishali
 5. Vimal Pandey S/O Prabhu Nandan Pandey Resident Of Village- Rampur Asura, P.S.- Bhagwanpur, District- Vaishali
 6. Tuna Pandey @ Mandu Pandey S/O Prabhu Nandan Pandey Resident Of Village- Rampur Asura, P.S.- Bhagwanpur, District- Vaishali
 7. Janki Devi W/O Prabhu Nandan Pandey Resident Of Village- Rampur Asura, P.S.- Bhagwanpur, District- Vaishali

.... Petitioner/s

Versus

1. The State Of Bihar
2. Vijay Shankar Pandey, s/o Yadunandan Pandey, resident of Village Rampur Ashurar, P.S. Bhgwapur, District Vashali.

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Shri Satya Prakash Sinha, Advocate
For the Opposite Party No.2 : Shri Surendra Kumar Singh, Advocate
Shri Prabhat Kumar Singh, Advocate
M/s Tulika Singh, Advocate

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CORAM: HONOURABLE SHRI JUSTICE DHARNIDHAR JHA

ORAL JUDGMENT

Date: 13-03-2015

Heard Shri Satya Prakash Sinha, learned counsel for the petitioners

and Shri Surendra Kumar Singh, learned counsel for the opposite party No.2.

2. Complaint petition bearing No. 2261 of 2011 was filed by the Opposite Party No.2 Vijay Shankar Pandey alleging that while his wife was feeding the cattle, accused Pappu Pandey alias Arvind Pandey dragged her by her hand into the maize field situated by the side of the road and committed rape upon her. The lady cried out during the course of being dragged away which had attracted her husband, the complainant, and others who saw the above named accused committing the act. No sooner the complainant and others had arrived there, accused Pappu Kumar Pandey alias Arvind Pandey started running away and after some time he re-appeared with other accused persons to assault the complainant and his mother Kaushalya Devi. The allegation also was that accused Dhiraj Pandey took away a gold chain costing Rs. 30,000/- from the neck of the complainant's wife whereas yet another gold chain was taken away by other accused Tuna Pandey alias Mantu Pandey from the neck of his mother.

3. After usual inquiry under Section 202 Cr.P.C. on the complaint petition, the summoning order dated 25.6.2012 was passed by the learned Judicial Magistrate, Hajipur in the above noted Complaint Case No. 2261 of 2011 holding that materials were sufficient to proceed against the accused who appeared having committed offences under Sections 341,323,379, 504 and 354 of the Indian Penal Code.

4. Learned counsel appearing on behalf of the petitioners has drawn the attention of the Court to the F.I.R. of Bhagwanpur P.S. Case No. 114 of 2011 under Sections 307, 302, etc of the Indian Penal Code and has submitted that Pappu Kumar Pandey alias Arvid Pandey was a practicing Advocate in the civil Courts, Hajipur and while he was, after attending to his court works, coming to his house, he was waylaid along with his mother who was accompanying him at about 6,30 P.M. on 3.8.2011. Injuries were inflicted by the complainant and his

companions who have been named as accused in the above noted F.I.R. of Bhagwanpur P.S. Case No. 114 of 2011. Both Pappu Kumar Pandey alias Arvind Pandey and his mother were shifted to Sadar Hospital, Hajipur where Pappu Kumar Pandey alias Arvind Pandey was declared brought dead and his mother was admitted for the treatment of her injuries.

5. The submission was that the very registration of Bhagwanpur P.S. Case No. 114 of 2011 makes it improbable that Pappu Kumar Pandey alias Arvind Pandey could be present at the same time in the maize field for indulging in commission of the offence as was alleged by the complainant in his complaint petition. The other absurdity of the complainant's story was that while naming the accused persons who had committed the offence he did not name Kaushalya Devi but again as may appear from the very record of fardbeyan recorded by A.S.I. H.N.Singh, of Bhagwanpur Police Station indicating that the lady was also hospitalized for treatment of her injuries. The submission, as such, was that the complainant's story was not only inherently improbable and absurd rather in order to setting up a defence in the prospective murder trial, he had filed a complaint petition, allegations contained wherein were flowing from mala fide and were not made in order to get justice.

6. The Supreme Court in the case of **State of Haryana Vs. Bhajan Lal reported in A.I.R.1992 SC 604** has set down the following seven conditions for quashing of the prosecution:-

“(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."

7. Here in the present case, it could hardly be denied that on the basis of a fardbeyan the F.I.R. in respect of murder of Pappu Kumar Pandey alias Arvid Pandey was drawn up by the police and that fardbeyan was recorded at Sadar Hospital, Hajipur on 3.8.2011. The date and time of the occurrence in which Pappu Kumar Pandey alias Arvind Pandey had received injuries are the same which had been put into the complaint petition by the opposite party No.2.

8. It is true that the court does not have full details of the injuries which were found on the person of accused Pappu Kumar Pandey alias Arvind Pandey, but it appears quite unacceptable on the basis of the document that not

only accused Pappu Kumar Pandey was injured but his mother was also assaulted and she was also injured and both of them were brought to Sadar Hospital, Hajipur for treatment. Pappu Kumar Pandey alias Arvind Pandey succumbed to his injuries and the doctor declared him brought dead. It appears quite absurd to accept that Pappu Kumar Pandey alias Arvind Pandey remained present at the place where the occurrence, as per the complaint petition had taken place. Indeed the allegations are patently absurd and inherently improbable.

9. The very fact that the complainant and others were alleged to have committed the murder of Pappu Kumar Pandey alias Arvind Pandey, an Advocate practicing in the civil courts, Hajipur while he was going back home after winding up his professional work along with his mother, itself is an indicator that the complaint petition was definitely flowing from mala fide and the allegations were made only to feed the animosity which the informant was carrying and they were never made with a view to get justice. The complaint petition was filed, in fact, in order to spit at the accused persons and with an ulterior motive of wrecking vengeance upon them.

10. In the result, the petition succeeds and is allowed. The prosecution of the petitioners initiated by passing the summoning order dated 25.6.2012 in Complaint Case No. 2261 of 2011 pending in the court of the Learned Judicial Magistrate, 1st Class, Hajipur is hereby quashed.

(Dharnidhar Jha, J)

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