

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.16796 of 2016

Arising Out of PS.Case No. -154 Year- 2011 Thana -DAUDNAGAR District- AURANGABAD

- =====
1. Anil Kujur, son of Sri Remish Kujur, Resident of Village - Kurunel, P.S. - Mahama Doal, District - Latehar, (Jharkhand), Posted as Revenue Karamchari, Halka No. 07 Anchal Daudnagar, District - Aurangabad.
 2. Brij Prasad Singh, son of Late Sukh Ram Singh, Resident of Village - Devi Bigha, P.S. - Daudnagar, District - Aurangabad.

.... Petitioners

Versus

1. The State of Bihar.
2. Sita Ram Paswan, son of Late Ganauri Paswan, Resident of Village - Kanap, P.S. - Daudnagar, District - Aurangabad.

.... Opposite Parties

=====

Appearance:

For the Petitioner/s : Mr. Mukesh Kumar Jha, adv.
Mr. Ashok Kumar No.6, adv.
For the State : Mr. Ganesh Prasad Singh (APP)
For the Opposite Party No.2: Mr. Vinay Mistry, Adv.

=====

CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY
ORAL ORDER

4 26-09-2016 Heard learned counsel for the petitioners and

learned counsel for the State.

2. This application has been filed for quashing the order dated 09.12.2015 passed by the Sub-Divisional Judicial Magistrate, Daudnagar, Aurangabad in Complaint Case No.148 of 2015, arising out of Daudnagar P.S. Case No.154 of 2011 for the offence under Sections 504 and 506/34 of the Indian Penal Code.



3. As per the allegation, Title Suit Nos.273 of 2006 and 91 of 2010 between the petitioner No.2 and opposite party No.2, are pending with respect to the land in dispute. The petitioner No.2 has sought information under the Right to Information Act from the Circle Officer, Daudnagar, who has furnished the information to the suit land in their favour. When the opposite party No.2 could know about the information, he approached the Circle Officer, Daudnagar, on 21.08.2010 with regard to granting information, whereupon the Circle Officer, Daudnagar, replied that the petitioner No.2 has given an amount of Rs.5,000/- and as such the information has been provided to him, which led to filing of the criminal case.

4. Learned counsel for the petitioners submits that on perusal of the allegation made against the petitioners does not constitute any offence as nowhere there is any allegation that the petitioners have acted in any way which may constitute a criminal offence. He further submits that if the opposite party No.2 may have a grievance, he may have grievance against the Circle Officer, Daudnagar, who has provided the wrong information as per the statement of the opposite party No.2, he should approach the Appellate Authority under the Right to

Information Act, but in stead of that criminal case has been filed.

5. Admittedly, the allegation which has been made against the petitioners does not constitute any criminal offence. The Hon'ble Supreme Court in the case of ***State of Haryana vs. Bhajan Lal***, reported in ***AIR 1992, S.C. 604***, has given a yardstick in what circumstances the Court should interfere in the matter.

6. It will be appropriate to quote paragraph No.108 of the said judgment, which reads as under:-

“108. 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 extra-ordinary 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 of 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 F.I.R. 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. Learned counsel for the opposite party No.2 submits that he has filed an application under Section 216 of the Cr.P.C. for addition of charge, which is still pending for disposal. But, when this Court asked learned counsel for the opposite party No.2 to show whether the charges which the opposite party No.2 intends to incorporate in the complaint petition does constitute such an offence, he could not point out that the allegation made against the petitioners constitute any criminal offence as mentioned in the application filed under Section 216 of the Cr.P.C.

8. In view of the successive pronouncement of the Hon'ble Supreme Court that in case when no offence is made out on its face value, under such circumstances, continuation of the criminal proceeding is an abuse of process of law and Court.

Accordingly, the order dated 09.12.2015 passed by the Sub-Divisional Judicial Magistrate, Daudnagar, Aurangabad, in Complaint Case No.148 of 2015, arising out of Daudnagar P.S. Case No.154 of 2011, is hereby quashed and the application is allowed.

(Shivaji Pandey, J)

pawan/-

U		T	
---	--	---	--