

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.54199 of 2013

Arising Out of PS.Case No. -120 Year- 2009 Thana -GARDANIBAGH District- PATNA

- =====
1. Syed Nooruddin Ashraf S/O Late Syed Azizuddin Ashraf
 2. Syed Qamruddin Ashraf S/O Late Syed Azizuddin Ashraf
Both resident of Aziz Manzil Chitkohra, P.S- Gardanibagh, District- Patna-800002.
 3. Bhola Paswan @ Kamla Paswan S/O Late Raja Paswan
 4. Umesh Paswan S/O Late Raja Paswan
 5. Baleshwar Paswan S/O Late Ragho Paswan
 6. Birendra Paswan S/O Baleshwar Paswan
- Nos. 3 to 6 are residents of Mohalla Chitkohra, P.S- Gardanibagh, District- Patna-800002

.... Petitioners

Versus

The State of Bihar

.... Opposite Party

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Appearance :

For the Petitioner/s : Mr. T. N. Maitin, Sr. Advocate
Md. Shahid Siddiqui, Advocate
Mr. Anisul Haque, Advocate

For the State : Mr. Jharkhandi Upadhyay, APP

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 22-08-2016

This application under Section 482 of the Code of Criminal Procedure, 1973 (for short 'CrPC') has been directed against the order dated 12.04.2010 passed by the learned Chief Judicial Magistrate, Patna in Gardanibagh P. S. Case No. 120 of

2009 lodged by the informant against the petitioners whereby the learned Chief Judicial Magistrate, Patna has summoned the petitioners to face trial for the offences punishable under Sections 341, 323 and 504/34 of the Indian Penal Code (for short 'IPC').

2. In the FIR dated 14.07.2009 lodged by the informant, it is alleged that on 14th July, 2009, at about 9.45 am, the informant was standing at his shop-"Rozy Shoe House" situated at Chitkohra Bazar, then petitioner no.2 Syed Qamruddin Ashraf and petitioner no. 1 Syed Nooruddin Ashraf, both sons of Syed Azizuddin Ashraf, along with petitioners no. 3 to 6, namely, Bhola Paswan @ Kamla Paswan, Umesh Paswan, Baleshwar Paswan and Birendra Paswan respectively assaulted him with legs and fists. They also assaulted one Mushtari Khatoon. It is also alleged that petitioners no. 1 and 2 also abused them and petitioner no. 3 Bhola Paswan snatched Rs.2000/- from the pocket of the informant.

3. On completion of investigation, the police submitted charge-sheet against the petitioners under Sections 341, 323 and 504/34 of the IPC pursuant to which, vide impugned order dated 12.04.2010, learned Chief Judicial Magistrate, Patna found a *prima facie* case to be made out under Sections 341, 323 and 504/34 of the IPC against the petitioners and summoned them to face trial.

4. It is submitted by Mr. T. N. Maitin, learned



Senior Counsel for the petitioners that at the time of occurrence, petitioner no. 1 Syed Nooruddin Ashraf, aged about 64 years, was a professor of English in A.N. College, Patna and petitioner no. 2 Syed Qamruddin Ashraf, aged about 60 years, is a chartered civil engineer whereas petitioners no. 3 to 6 are their employees, who used to collect rent from their tenants. It is submitted that petitioner no. 2 is the landlord of the shop in which the alleged “Rozy Shoe House” was running. He had filed Eviction Suit No. 21 of 1999 for eviction of the said tenanted shop against its tenant Md. Shekhu and said Eviction Suit was decreed in his favour. Thereafter, petitioner no. 2 filed Execution Case No. 5 of 2002, for execution of the decree of eviction passed in Eviction Suit No. 21 of 1999. The informant Firoz Ahmad @ Shekhu also filed Title Suit No. 2 of 2002 in respect of the said shop against the petitioner no. 2, which was also dismissed, vide judgment dated 24.12.2003. It is submitted that Misc. Case No. 2 of 2003 filed by the informant in Execution Case No. 5 of 2002 resisting the said decree of eviction, was also decided in favour of petitioner no. 2 by learned Execution Munsif, Patna, vide final order dated 15.06.2009. Thereafter, under the order of Execution Munsif, delivery of possession of the said shop in question was effected by the Nazir of the court on 14th July 2009 and, on the same date, a malicious FIR was lodged by the informant of the case in order to humiliate, harass and blackmail

the petitioners.

5. It is urged by learned Senior Counsel appearing for the petitioners that though the police had submitted charge-sheet against the petitioners on completion of investigation, the materials collected during investigation itself would demonstrate that the police had doubted the veracity of the prosecution case. He has also contended that during the pendency of the application, substance of accusation was explained to the petitioners on 3rd May, 2014 and, since then, the matter has been adjourned from one date to another on several occasions for examination of witnesses on behalf of the prosecution, but no witness has turned up so far to depose before the court.

6. On the other hand, Mr. Jharkhandi Upadhyay, learned Additional Public Prosecutor for the State has opposed the present application. He has submitted that the allegations made in the FIR do attract the ingredients of the offences alleged. In course of investigation the police found the allegations to be true and a report under Section 173(2) of the CrPC was filed in the court against the petitioners pursuant to which the learned Chief Judicial Magistrate took cognizance of the offences. He has submitted that the defence of the petitioners can be looked into by the trial court at an appropriate stage during trial, but the same cannot be made ground for quashing of a *bona fide* criminal prosecution.

7. I have heard learned counsel for the parties and perused the record.

8. It would be apparent from the unimpeachable documents brought on the record that the petitioner no. 2 is the landlord of the shop in which “Rozy Shoe House” was running. He had filed Eviction Suit No. 21 of 1999 for eviction of the tenant from the said tenanted premises and a decree was passed in his favour. Whereafter, he filed Execution Case No. 5 of 2002 in Eviction Suit No. 21 of 1999, which was decided in favour of the petitioner no. 2, vide final order dated 15 June, 2009. The certified copy of the report of Nazir, dated 14th July, 2009, as contained in Annexure-6 to the present application, would also reflect that Nazir of the court effected the delivery of possession of the shop in question on 14th July, 2009 to petitioner no. 2 and on the same date the FIR of the case, in question, was instituted. I also find that Misc. Case No. 2 of 2003 filed by the informant resisting the aforesaid eviction decree was also decided against him.

9. In the aforesaid background of the facts, when I look to the allegations made in the FIR, I find force in the submission made by the learned Senior Counsel for the petitioners that a malicious FIR was lodged by the informant of the case in retaliation to eviction of the informant from the tenanted premises.

10. It is true that certain allegations have been made



in the FIR against the petitioners and on completion of investigation the police have submitted charge-sheet against them for the offences punishable under Sections 341, 323 and 504/34 of the IPC, but the impugned order dated 12.04.2010 passed by the learned Chief Judicial Magistrate, Patna does not show any application of mind. It had been passed on a printed format by filling up the blanks. The need for proper application of mind by the courts at the stage of summoning has been highlighted by the Apex Court in **Pepsi Foods Ltd. & Anr. vs. Special Judicial Magistrate & Ors.** reported in **(1998) 5 SCC 749**. The Apex Court has held that summoning of an accused in a criminal case is a serious matter and criminal law cannot be set into motion as a matter of course. It has also been held that before summoning of the accused the Magistrate has to carefully scrutinize the evidence brought on the record. As noted above, the impugned order has been passed in very casual and mechanical manner by simply filling up the blanks on a pre-prepared printed format. It is equally true that an elaborate order is not required to be passed at the stage of taking cognizance and issuing summons, but the order must at least disclose that there has been an application of mind.

11. Keeping in mind the facts of the case and the manner in which the impugned order has been passed, this Court would like to consider the ambit and scope of Section 482 of the



CrPC under which the present application has been filed. Section 482 of the CrPC states that nothing in the CrPC shall be deemed to limit or affect the inherent powers of the High Court to make such orders as may be necessary to give effect to any order under the CrPC, or to prevent abuse of the process of any court or otherwise to secure the ends of justice.

12. In **State of Karnataka vs. Muniswamy & Ors.**, reported in (1977) 2 SCC 699, the Supreme Court observed that the wholesome power under Section 482 of the CrPC entitles the High Courts to quash a proceeding when it comes to the conclusion allowing the proceeding to continue would be an abuse of the process of the court or that ends of justice require that the proceeding ought to be quashed. The High Court has been vested with inherent powers both in civil and criminal matters, to achieve salutary public purpose, a court proceeding ought not to be permitted to degenerate into a weapon of harassment or persecution. The Supreme Court also 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.

13. In **Chandrapal Singh & Ors. vs. Maharaj Singh & Anr.**, reported in (1982) 1 SCC 466, in a landlord-tenant matter where criminal proceeding had been initiated, the Supreme Court observed as –“*a frustrated landlord after having met his*



waterloo in the hierarchy of civil courts, has further enmeshed the tenant in a frivolous criminal prosecution which prima facie appears to be an abuse of the process of the law. The facts when stated are so telling that the further discussion may appear to be superfluous.” In the said judgment, the Supreme Court noticed the tendency of perjury is very much on the increase and unless by firm action courts come down heavily upon such persons, the whole judicial process would come to ridicule. The Court also observed that chagrined and frustrated litigants should not be promoted to give vent to their frustration by cheaply invoking the jurisdiction of the criminal court.

14. In **State of Haryana & Ors. vs. Bhajan Lal & Ors.**, reported in **1992 Supp (1) 335**, the Supreme Court has given certain guiding principles for invoking the powers under Section 482 of the CrPC which are as follows:-

“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.”

15. Having considered the ambit and scope of Section 482 of the CrPC in the light of the ratio laid down in the various decisions, as noted above, this Court is of the opinion that the present case falls in category 5 and 7 of the guiding principles laid down by the Supreme Court in the matter of **State of Haryana vs. Bhajan Lal** (supra). In the present matter, it would appear that a frustrated tenant after having met his waterloo before the civil court has enmeshed the landlord in a vexatious and malicious criminal prosecution.

16. In the opinion of this Court, no useful purpose would be served by allowing the criminal prosecution to continue further.

17. Accordingly, the impugned order dated 12.04.2010 passed by the learned Chief Judicial Magistrate, Patna in Gardanibagh P. S. Case No. 120 of 2009 and all subsequent proceedings arising out of the said case, are hereby quashed.

18. The application stands allowed.

(Ashwani Kumar Singh, J.)

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