

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.34663 of 2012

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1. AZAZUL MIAN @ AJAJUL MIAN.
 2. IMANUL MIAN.
 3. RAFIQUE MIAN.
ALL SONS OF HASIM MIAN.
 4. NOOR JAHAN W/O HASIM MIAN.
ALL RESIDENT OF VILLAGE- MANANA, POLICE STATION-
RAMGARHWA, DISTRICT- EAST CHAMPARAN.
 5. IMAM MIAN S/O LATE MURTUZA MIAN.
 6. MONAF MIAN S/O IMAM MIAN.
BOTH RESIDENT OF VILLAGE- NARIRGIR, POLICE STATION-
RAMGARHWA, DISTRICT- EAST CHAMPARAN.

.... PETITIONER/S

VERSUS

1. THE STATE OF BIHAR
2. KALIMA KHATOON W/O NIRMAL MIAN RESIDENT OF
VILLAGE- JATIYAH, POLICE STATION- RAXAUL, DISTRICT-
EAST CHAMPARAN

.... OPPOSITE PARTY/S

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Appearance:

For the Petitioner/s : Mr. Dhurendra Kumar, Adv.
For the Opposite Party/s : Mr. Subhash Chandra Mishra, APP

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI
ORAL ORDER

5 03-10-2016 Heard learned counsel for the petitioners as well as

learned Additional Public Prosecutor assisted by learned
counsel for the opposite party no.2.

Petitioners who have been summoned by the
learned lower court vide order dated 25.06.2007 relating to
Complaint Case No.64A of 2007 as well as the order dated
18.04.2012 passed by Additional Sessions Judge, Vth, East
Champaran at Motihari in Criminal Revision No.340 of 2007
whereby and whereunder the learned Revisional Court
dismissed the revision, have filed instant petition in order to
challenge the respective orders.

It has been submitted on behalf of petitioners that



out and out, the allegations suggest fragrance of civil dispute and on account thereof, the learned lower court would not have taken cognizance and in likewise manner, the revisional court should not have rejected the revision petition. To substantiate such plea, it has been submitted that from the protest cum complaint petition it is apparent that on account of purchase of land by the opposite party no.2 from the brother of the petitioner Azazul Mian, the allegation goes to the extent that complainant was also caught hold and then under the threat of life Imam Mian succeeded in getting her thumb impression. Therefore, it has been submitted that under the garb of land dispute instant case has been registered with false and frivolous allegation.

The learned counsel for the opposite party no.2 has submitted that victim was examined during course of inquiry and he had substantiated the allegation regarding his abduction. It was fortunate that complainant got information whereupon she gone to the place of accused persons, raised hue and cry whereupon ultimately succeeded in rescuing the victim.

The learned Additional Public Prosecutor has submitted that at the present stage only prima facie material has to be seen.

It is needless to remind that at the stage of taking cognizance, prima facie material has to be seen. Side by side malicious prosecution should also be perceived to ward of any kind of possibility treating the court to be tool at the hands of

unscrupulous litigants. That being so, in the case of ***State of Haryana v. Bhajan Lal*** reported in ***1992 Supp (1) SCC 335*** the following criteria have been identified whereupon prosecution can be quashed.

(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.

Although, the reason best known to the petitioners, neither the statement of the witnesses nor the S.A. of the complainant has been annexed with the petition. In the aforesaid background it is difficult to perceive what kind of material has been adduced during course of an inquiry. Apart from this, the fact as has been pleaded there happens to be absence of material relating to an exposé with regard to malicious prosecution covering one of the criteria as referred herein above. However, the thumb impression unless and until is being converted as a valuable security would not attract applicability to extortion. That being so, the cognizance on that score relating to fee 386 IPC is found not at all substantiated. So far other aspect are concerned, the matter is kept opened for the petitioner to raise at an appropriate stage in case prosecution fails to substantiate the same.

With the aforesaid observation, instant petition is disposed of.

(Aditya Kumar Trivedi, J.)

Prakash Narayan

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