

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.12237 of 2012

Arising Out of Complaint Case No. -2388 Year-2010 Thana – District- MUZAFFARPUR

=====

1. Rajnandan Singh S/O Badri Singh
2. Rajeev Bhushan S/O Girish Kumar
3. Satya Narayan Trivedi S/O Late Shiv Nandan Trivedi
4. Ram Nandan Thakur S/O Shivnandan Trivedi,
All are R/O Moh-Mishra Tola, Guannipur, P.S.-Kazi Mohammadpur, Distt-
Muzaffarpur

.... Petitioners

Versus

1. The State of Bihar
2. Chandreshwar Singh, S/o Late Ram Bahadur Singh, R/o village-Soharathi, P.S.-
Jandaha, District-Vaishali at present Mohalla-Mishra tola, Guannipur, P.S. Kazi
Mohammadpur, District-Muzaffarpur. Opposite Parties

=====

Appearance :

For the Petitioner/s : Mr. Ajay Thakur, Advocate
Md. Imteyaz Ahmad, Advocate
Mr. Ravi Ranjan, Advocate

For the Opposite Party No.2 : Mr. Rajive Ranjan Singh, Advocate

For the State : Mr. Lalan Kumar, APP

=====

CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 19-10-2016

By way of the present application preferred under
Section 482 of the Code of Criminal Procedure, 1973 (for short
'CrPC'), the petitioners, who have been summoned by the Judicial
Magistrate-1st Class, Muzaffarpur in Complaint Case No. 2388 of

2010 corresponding to Trial No. 4415 of 2012 in a case in which cognizance has been taken of the offence punishable under Section 323 of the Indian Penal Code (for short 'IPC'), have sought to quash the summoning order dated 7th December, 2011.

2. I have heard Mr. Ajay Thakur, learned counsel for the petitioners, Mr. Rajive Ranjan Singh, learned counsel appearing on behalf of the opposite party No. 2 and Mr. Lalan Kumar, learned Additional Public Prosecutor appearing on behalf of the State.

3. Before entering into the merit of the present application, the allegations made by the complainant/opposite party no. 2 in the complaint need to be taken note of. The case of the complainant, in brief, is set out as under:-

(i) The complainant Chandreshwar Singh states that he is a tenant in the house of accused-petitioner no. 1 Rajnandan Singh since the year 2003. Rajnandan Singh being in need of money, demanded Rs. 1,50,000/- from the complainant with the promise to return the same within 2-3 days and, on failure to do so, he promised to execute a sale deed in respect of 10 dhoores of land in his favour. Relying upon the words of Rajnandan Singh, the complainant gave

Rs.1,50,000/- in cash in presence of the witnesses Tuntun Choubey and Sushil Singh in the month of July, 2006, but Rajnandan Singh neither returned the money to the complainant within the stipulated period of 2-3 days nor executed the sale deed in his favour as promised.

(ii) It is further stated that Rajnandan, however, proposed to pay back the amount in instalments. He returned Rs.1,05,000/- to the complainant in two instalments and, thereafter, when the complainant demanded the remaining due amount to the tune of Rs. 45,000/-, the accused persons asked him to vacate the house. When the complainant refused to vacate the house, they became angry and started abusing and assaulting him. They were adamant to get the house vacated, but on repeated request made by the complainant, they granted him one month time to vacate the house.

(iii) On the basis of the allegations made above, the complainant concludes that the accused Rajnandan Singh cheated him by taking him into confidence causing him a loss of Rs.45,000/-.



4. After institution of the complaint, the statement of the complainant was recorded on oath and, thereafter, statements of three witnesses, namely, Tuntun Choubey, Narayan Prasad Gupta and Sushil Singh were recorded in course of inquiry conducted under Section 202 of the CrPC, whereafter, the learned Magistrate summoned the petitioners and one Ram Bahadur Thakur finding a prima facie case to be made out under Section 323 of the IPC against them.

5. The petitioners seek quashing of the complaint by pointing out that the allegations made in the complaint are malicious in nature and it has been filed as a counter-blast to Kazi Mohammadpur P.S. Case No. 187 of 2010 registered under Sections 406, 420, 468 and 120-B of the IPC against the complainant of the present case and his son Krishna Mohan on the basis of a complaint instituted by petitioner no. 1 Rajnandan Singh.

6. It is contended that petitioner no. 1 Rajnandan Singh had instituted a petition of complaint in the court of Chief Judicial Magistrate, East Muzaffarpur, vide Complaint Case No. 2350 of 2010, on 5th August, 2010 and, on the same day, the learned Chief Judicial Magistrate exercising his power conferred under Section 156(3) of the CrPC, referred the complaint to the police for investigation, pursuant to which Kazi Mohammadpur P.S. Case No.

187 of 2010, was instituted on 20.09.2010 against the complainant of the present case.

7. It has been contended that as a matter of fact the complainant Chandreshwar Singh, while residing in the house of petitioner no.1, as a tenant took him and his family members in confidence. He persuaded petitioner no. 1 Rajnandan Singh to get his grand-son admitted in an Engineering College at Chennai and, on that pretext, he took Rs. 25,000/- from him on 26th May, 1998 and again Rs. 98,000/- was deposited in the account of aforesaid Krishna Mohan on 06.08.2008 and 07.08.2008 in two installments of Rs. 49,000/- each, but neither the grand-son of the petitioner no. 1 Rajnandan Singh was admitted in the Engineering College nor the amount taken from him in the name of such admission was refunded by the complainant. When the petitioner Rajnandan Singh realized that he has been cheated by his tenant Chandreshwar Singh, he instituted the aforesaid complaint in the court on 5th August, 2010 and when the complainant learnt about the filing of the complaint against him and his son, he filed the present complaint after four days on 9th August, 2010.

8. It has also been contended that neither the complainant in his statement on oath nor any witness examined in course of inquiry under Section 202 of the CrPC could file any

document to show that any amount was ever paid by the complainant to the accused Rajnandan Singh and, on the contrary, there is enough evidence to show that petitioner no. 1 had transferred money in the account No.30288766608 of the present complainant.

9. It is also submitted that petitioner no. 1 is aged about 80 years and has retired from the post of Assistant Registrar from the Bihar University, whereas petitioner no. 2 is employed at Bangalore and petitioners no. 3 & 4 have also retired from the post of Assistant Clerk and District Fishery Officer respectively and are aged above seventy years and there is absolutely no evidence to support the contention of the complainant that he was assaulted by the petitioners of this case. It is submitted that apart from the petitioner no. 1 Rajnandan Singh, the other accused persons of the present complaint were all witnesses to the complaint instituted by petitioner no. 1 Chandreshwar Singh against the complainant of the present case and his son and, as such, they have been framed in a false and fabricated case.

10. On the other hand, learned counsel for the State has submitted that it is not the stage to consider the defence of the accused. The complainant and his witnesses have supported the allegation during inquiry conducted by the Magistrate and finding a prima facie case to be made out under Section 323 of the IPC against

the petitioners, they have been summoned to face trial. He has submitted that no illegality can be found with the impugned order of cognizance.

11. The learned counsel for the opposite party no. 2 has also supported the contention of the learned counsel for the State. He has submitted that the complainant has fully supported the allegation made in the complaint during his examination on oath and the three witnesses examined on his behalf have also corroborated the statement made by the complainant.

12. From a perusal of the order impugned, it would be evident that the learned Magistrate has reached to a finding that since the witnesses examined during investigation have not produced any documentary evidence, the allegations made in the complaint relating to Sections 147, 149, 341, 406 and 420 of the IPC could not be substantiated. However, as the witnesses had supported the allegation of assault caused to the complainant, cognizance has been taken under Section 323 of the IPC.

13. Learned counsel for the opposite party no. 2 and learned Additional Public Prosecutor for the State have not disputed the contention of the petitioner that the petitioner no. 1 Rajnandan Singh had filed Complaint Case No. 2340 of 2010 in the court of the Chief Judicial Magistrate, East Muzaffarpur on 5th August, 2010,



which was referred to the police leading to institution of Kazi Mohammadpur P.S. Case No. 187 of 2010 against the complainant and his son Krishna Mohan. The present complaint has been filed after four days of the filing of the aforesaid Complaint Case No. 2340 of 2010. It is also an admitted case of the present complainant that he is a tenant in the house of petitioner Rajnandan Singh.

14. From a perusal of the reply given by the complainant to the question put by the Magistrate during his examination on oath, I find that the complainant has admitted that at the time of giving money to the accused Rajnandan Singh, no document in this regard was prepared. He has also admitted that at the time of assault no outsider was present. Thus, admittedly, the case so far as the allegation of assault attracting the offence punishable under Section 323 of the IPC is concerned rests on the sole statement of the complainant.

15. While appreciating the present application made under Section 482 of the CrPC on merits, it needs to be noted that the law with regard to quashing of criminal complaint is no longer *res integra*. Ordinarily, if the contents of the complaint disclose commission of an offence, such a complaint cannot be quashed. However, laying down the scope of interference by the High Court in the matter of quashing of complaint, the Supreme Court in **State of**

Haryana & Ors. v. Bhajan Lal and Ors. [(1992) Supp (1) SCC

335], laid down in paragraph no. 102 as under:-

“102. 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 or 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 F.I.R. 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.”

16. It is clear from a close reading of principle laid down in **Bhajan Lal (supra)** that quashing of a complaint is possible under certain circumstances. They are:- (a) when the allegations made in the complaint, even if taken at their face and accepted in their entirety do not prima-facie constitute any offence or make out a case against the accused; (b) when the uncontroverted allegations made in the complaint and the evidence collected in support of the same do not disclose the commission of any offence and/or make out a case against the petitioner; and (c) 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 of the accused and with a view to spite him due to private and personal grudge.

17. In **Hira Lal & Ors. v. State of U.P. [(2009) 11 SCC 89]**, the Supreme Court has observed:

“An FIR or complaint can be quashed if the same is found to be actuated by mala fide or if the FIR or the complaint makes accusation, which are so absurd or inherently improbable that no reasonable prudent person would accede the allegations made in the FIR or the complaint, as the case may be, as true and/ or in a case where the FIR or the complaint, as the case may be, is lodged as a counter-blast”.

18. In **State of Karnataka v. L. Munniswamy [(1977) 2 SCC 699]**, the Supreme Court has observed that a court proceeding ought not to be permitted to degenerate into weapon of harassment or persecution.

19. In **M.N. Ojha & Ors. v. Alok Kumar Srivastava & Ors. [(2009) 9 SCC 682]**, the Supreme Court observed:-

“The Complaint obviously has been filed as counter blast to the proceedings already initiated by the bank including the first information report



lodged by the first appellant against the complainant and borrower for the offences of cheating and misappropriation. Sequence of events undoubtedly suggests that the criminal proceeding have been maliciously instituted with an ulterior motive of wreaking vengeance on the appellants and with a view to spite them due to personal grudge. It was clearly intended to prevent the public servant from discharging their duties. The criminal law has been set in motion by the learned SDJM by mere asking to do so by the complainant. The High Court almost abdicated its duty in refusing to exercise its jurisdiction under Section 482 of the Code of Criminal Procedure though the case in hand required its interference in order to prevent abuse of the process by a court subordinate to it. A clear case is made out requiring our interference to secure ends of justice.”

20. In the backdrop of the proposition of law as delineated above, when one looks to the complaint, which the opposite party no. 2, herein has lodged, it can be clearly seen that it has been lodged as a counter-blast to the case lodged by the petitioner Rajnandan Singh against the complainant Chandeshwar Singh and his son Krishna Mohan leading to institution of the FIR of Kazi Mohammadpur P.S. Case No. 187 of 2010.



21. There is allegation in the complaint that all the accused persons mercilessly assaulted the complainant but no injury report was filed by the complainant before the Court. It has also not been stated by the complainant that he got himself examined by any doctor. Thus, the entire allegation rests on the ocular version of the complainant. Admittedly, the complainant was a tenant in the house of the petitioner no. 1. The other accused persons of the complaint in question were all witnesses to the aforesaid Complaint Case No. 2340 of 2010 lodged by the petitioner no. 1 Rajnandan Singh. The institution of the present complaint only four days after the institution of the complaint against the complainant and his son is not only a counter-blast to Complaint Case No. 2340 of 2010, but his son is also seems to be manifestly attended with mala fide with ulterior motive for wreaking vengeance of the accused and with a view to spite them due to private and personal grudge. It was clearly intended to prevent the petitioner no. 1 and his witnesses from deposing against the complainant and his son.

22. Having regard to the discussions made, hereinabove, this Court is convinced that allowing the prosecution to continue in the present complaint would be nothing but an abuse of the process of the court.

23. Accordingly, the impugned order dated 7th

December, 2011 passed by the learned Judicial Magistrate-1st Class, Muzaffarpur, in Complaint Case No. 2388 of 2010, corresponding to Trial No. 4415 of 2012 and all consequential proceedings arising out of the aforesaid complaint case are quashed.

24. The application is, accordingly, allowed.

(Ashwani Kumar Singh, J.)

Sanjeet/-

AFR/NAFR	AFR
CAV DATE	-----
Uploading Date	21.10.2016
Transmission Date	21.10.2016