

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.13123 of 2014

Arising Out of PS.Case No. -773 Year- 2009 Thana -MUNGER COMPLAINT CASE District-
MUNGER

- =====
1. Ram Sagar Bharati S/O Late Dev Narayan Bharati
 2. Vinay Krishna Bharati S/O Ram Sagar Bharati
 3. Ram Krishna Bharati @ Chhotu Bharati S/O Ram Sagar Bharati All Resident Of Village Teghra, Near Registry Office, P.S. Teghra, District Begusarai.
 4. Ajit Kumar Jha S/O Joginder Jha Resident Of Purani Bazar, Bhagirath Road, Teghra, P.S. Teghra, District Begusarai.

.... Petitioner/s

Versus

1. The State Of Bihar.
2. Janak Nandani Mishra W/O Nandlal Mishra Resident Of Village Babhangama, P.S. Muffasil, District Munger.

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Ravi Shanker Pankaj
For the Opposite Party/s : Mr. Aditya Nr.Singh 1(App)

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI
ORAL ORDER

3 19-11-2016 Heard learned counsel for the petitioners as well as

learned Additional Public Prosecutor.

In spite of having notice validly served against O.P.
no.2, she is not at all represented.

From the narration of the complaint petition it is
evident that parties are inter related and the same is found duly
substantiated from paragraph 6 of the petition wherefrom it is
evident that Bandana Bharti, daughter of petitioner no.1, was
married with son of the O.P. No.2/ complainant in the year 2002,



unfortunately, the relationship became sour ultimately cropping up series of litigations amongst the parties and the present one, is one of the link thereof. It is also apparent from the complaint petition that both the parties are residing away from each other and in the aforesaid background, it has been alleged that the accused persons came at the place of complainant / O.P.No.2, searched out her husband who at that very moment had gone to market and after whose arrival, they both were assaulted, their house was ransacked, properties were destroyed and further threatened that Bandana be allowed to stay at their place so that they would maintain themselves realizing the amount at the end of son of O.P. No.2/complainant.

In case of ***State of Hariyana & Ors. Versus Bhajan Lal & Ors.*** reported in ***AIR 1992 SC 604***, the Hon'ble Apex Court has identified following categories including others whereupon prosecution can be quashed and those are :-

“(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 uncontrovered 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, on 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 grounds for proceedings 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 proceedings 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 malafide 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.”

From the narration of the complaint petition in consonance with the solemn affirmation of the complainant coupled with P.Ws, as shown in the complaint petition some foul smacks and on account thereof, the malicious prosecution would not be allowed as laid down under Bhajan Lal (supra) case.

That being so, the order impugned dated 3.8.2010 passed by Smt. Rajni Kumari, J.M. 1st. Class, Munger, in Complaint Case No.773© of 2009 summoning the petitioners to face trial for offence under Sections 323, 448, 354, 427, 379/34 of the Indian Penal Code. is set aside.

The instant petition is allowed.

(Aditya Kumar Trivedi, J)

AnilKrSinha/-

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