

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.28838 of 2013

Arising out of Complaint Case No. -75 (C) Year- 2008 Thana -Kankarbagh District- PATNA

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1. Dadan Chaubey S/o Late Rameshwar Nath Chaubey, at present posted as Deputy Director, Welfare South Chhota Nagpur Ranchi (Jharkhand), resident of Sector IX, Dhurva, P.S.- Dhurya, District- Ranchi (Jharkhand).

2. Binay Kumar Sinku S/o Prahalad Sinku, at present posted as Project Director, Integrated Tribal Development Agency, Chaibasa (Jharkhand) resident of Hawaii Nagar, Road No. 11, P.S.- Jagnathpur, District- Ranchi (Jharkhand).

3. Arvind Vijay Bilung S/o Climent Bilung, at present posted as Deputy Director Secondary Education, Ranchi (Jharkhand), resident of behind St. Francis School, Harmu, P.S.- Argora, District- Ranchi (Jharkhand). Petitioner/s

Versus

1. The State of Bihar.

2. Uday Shankar Chaudhary, Advocate, S/o Late B.K. Chaudhary, resident of N.C.-106, S.B.I. Colony, P.S.- Kankarbagh, District- Patna..... Opposite Party/s

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Appearance :

For the Petitioner/s : M/s Raj Kumar Rajesh and Girish Chandra, Advocates
For the Opposite Party/s : Mr. Sanjay Kumar Tiwary, APP

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CORAM: HONOURABLE MR. JUSTICE SANJAY KUMAR

ORAL JUDGMENT

Date: 14-09-2017

1. Heard both sides and perused the record.

2. This criminal miscellaneous application under section 482 of the Code of Criminal Procedure has been filed to quash the order dated 4th September 2008 passed by the learned Judicial Magistrate 1st Class, Patna in Complaint Case No. 75 (C) of 2008 whereby and whereunder the learned Magistrate finding *prima facie* case against the petitioners, took cognizance for the offences under sections 323, 341 and 504/34 of the Indian Penal Code.

3. The opposite party no. 2 filed a complaint petition on the file of learned Chief Judicial Magistrate alleging *inter alia* that on



07.01.2008 when he was returning to his house from Civil Court, Patna, these petitioners intercepted, abused and assaulted him.

4. On perusal of complaint petition and the annexures enclosed therewith, I find that these petitioners were Gazetted Officers on the relevant date posted as S.D.O., Ramgarh, Hazaribagh (Jharkhand), District Education Officer, Giridih (Jharkhand) and Director, Jharkhand Agriculture Board, Ranchi. The petitioner no. 1 while posted as Executive-cum-Residential Magistrate of Hatia, Ranchi in the year 2003-04, a dispute cropped up in the management of D.A.V. School, Dhurva, Ranchi and the then Deputy Commissioner, Ranchi asked the petitioner no. 2 to take necessary action. Accordingly, a proceeding under section 145 of the Code of Criminal Procedure was initiated, vide Case No. 2200 of 2003. The petitioner no. 2, as per Memo no. 4047 dated 12.12.2013, appointed the petitioner no. 3 as Receiver of the School under section 146 (2) of Cr.PC. and a direction was given for proper auditing of school account and to take legal action in the event of misappropriation or defalcation in the School account. In course of audit, it was found that the opposite party no. 2 who was Legal Advisor of the School, had taken an amount of Rs.37,500/-, Rs.34,400/- and Rs.74,500/- on 05.12.2003, 27.11.2003 and 09.12.2003 respectively in connivance with the Secretary of the School. The opposite party no. 2 had taken



the said amount on the basis of forged and fabricated bill as there was absolutely no case pending against the school. The petitioner no. 3, as per direction of Deputy Commissioner, Ranchi, lodged Dhurva Police Station Case No. 8 of 2004 on 15.01.2004 against 25 persons including the O.P. No. 2 for defalcation of misappropriation of money of D.A.V. School. The opposite party no. 2 was accused no. 7 in the said Police case registered for the offences under sections 406 and 120(B)/34 of the Indian Penal Code (vide Annexure-7). After institution of said case, the opposite party no. 2 filed complaint case No. 133 of 2004 against these three petitioners. Subsequently, on the same allegation, the opposite party no. 2 has filed the present case. The allegation of abusing and assaulting appears omnibus. The opposite party no. 2 admittedly is an Advocate practicing in Civil Court, Patna and also an accused of Dhurva Police Station Case No. 08 of 2004 wherein there is a specific that he had taken heavy amount towards legal expense on the basis of forged and fabricated bills/documents. The petitioners on the basis of audit report, had taken action and lodged an FIR against the opposite party no. 2 and other co-accuseds. All the petitioners are Gazetted Officers and for their prosecution no sanction under section 197 of the Code of Criminal Procedure has been taken. The opposite party no. 2, in spite of service of notice, did not appear to oppose this criminal miscellaneous



application which shows that he had filed the complaint case to wreak vengeance against the petitioners. The criminal prosecution of these petitioners appears to be an abuse of process of Court.

5. In State of Haryana v. Bhajan Lal, it was, *inter alia* observed as follows: (SCC pp. 378-79, 102): 1992 Supp (1) SCC 335 : 1992 SCC (Cri) 426 : AIR 1992 SC 604.

“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 extraordinary 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 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."

6. The present case is squarely covered by clause 1, 5 and 7 of the guidelines given by the Hon'ble Apex Court in the above case.

7. Having considered the submission, facts and circumstances of the case and in view of the guidelines given by the Hon'ble Supreme Court in the above case, the order dated 4th September 2008 passed by the learned Judicial Magistrate 1st Class, Patna in Complaint Case No. 75 (C) of 2008 as well as criminal prosecution of these petitioners on the basis of said order, is hereby quashed.

8. This criminal miscellaneous application is, accordingly, allowed.

(Sanjay Kumar, J)

Mahesh/-

AFR/NAFR	AFR
CAV DATE	N/A
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