

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.40025 of 2014

Arising Out of PS. Case No.-1823 Year-2013 Thana- BEGUSARAI COMPLAINT CASE
District- Begusarai

1. Hari Chaudhary @ Hari Shankar Choudhary Son of Late Sita Ram Chaudhary
2. Shiko Chaudhary S/o Hari Chaudhary Both resident of village - Fetha, P.S. - Bachhawada, District - Begusarai

... .. Petitioner/s

Versus

1. The State of Bihar
2. Urmila Devi W/o Ram Kishun Sada R/o Village - Fetha, Dhala No. 4, P.S. - Bachhawada, District - Begusarai

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr. Arbind Kumar Singh, Adv
For the Opposite Party/s	:	Mr. VINOD SHANKAR MODI (APP)
For the O.P. No. 2	:	Nakul Kumar Jamuar, Adv

CORAM: HONOURABLE MR. JUSTICE S. KUMAR

ORAL JUDGMENT

Date : 08-11-2017

Heard learned counsel for the parties.

This petition under Section 482 of the Cr.P.C has been filed for quashing the order taking cognizance dated 25.07.2014 passed by the learned Judicial Magistrate cum Additional Munsif-I, Begusarai in Complaint Case No. 1823C of 2013 under Sections 448, 323, 380, 504 and 34 of the Indian Penal Code.

Learned counsel for the petitioners submit that earlier



on 19.04.2012 a written complaint was made to the Superintendent of Police, Begusarai, making similar allegation that on 24.03.2012 the informant-opposite party no. 2 was assaulted by the petitioners and they took away money and food articles. The said application was forwarded to the Officer-in-Charge of S.C. & S.T. P.S. of Bishunpur and on investigation the allegations were found to be false. The complainant-opposite party no. 2 again on 31.12.2013, filed an application before the Hon'ble Chief Minister, Government of Bihar alleging that the petitioner no. 2 had taken away Potato of Rs. 2000/- from her house and had also assaulted her husband. The said application was forwarded to the Officer-in-Charge of Bachhwada P.S. who on inquiry found and reported that the husband of the complainant had stolen Potato from the field of petitioner no. 1 and found allegations to be false and mischievous. Petitioner no. 2 filed an application in the Gram Panchayat Raj, Fetha stating therein that the complainant-opposite party no. 2 is regularly filing false and concocted case against the petitioners and requested the Mukhiya and Sarpanch to take the matter in General Meeting of Gram Katachari and a general meeting was convened on 06.10.2013 at 4:00 pm in community hall near Dhala No. 4, where all members of Gram Katchari, Mukhiya,



Sarpanch and respectable persons of the society participated and found that complainant-opposite party no. 2 is residing over the land of petitioner and is lodging false and frivolous complaints against the petitioners for extraneous reasons.

The complainant-opposite party no. 2 was examined on S.A. and in support of his complaint case, witnesses were also examined and on the basis of inquiry, the court below found *prima facie* case to be made out against the petitioners and took cognizance of the offence punishable under Sections 448, 323, 380, 504 and 34 of the Indian Penal Code and issued summons for their appearance to face the trial.

It has been submitted by the learned counsel for the petitioner that frivolous and fictitious complaints of similar nature is being filed by the complainant-opposite party no. 2 against the petitioners and on investigation by the police all the allegations have been found to be false and frivolous. The informant-opposite party no. 2 resides on the land of the petitioners and in order to encroach other lands of petitioners, is filing false petitions to pressurize the petitioners.

Notices were issued to the complainant-opposite party no. 2 but none had appeared on behalf of the Opposite Party No. 2.



The Apex Court in a judgment since then reported in ***AIR 2017 SC 1884 (Vineet Kumar vs State of Uttar Pradesh)*** paragraph no. 39, has held as follows:-

"39. Inherent power given to the High Court under Section 482 Cr.P.C. is with the purpose and object of advancement of justice. In case solemn process of Court is sought to be abused by a person with some oblique motive, the Court has to thwart the attempt at the very threshold. The Court cannot permit a prosecution to go on if the case falls in one of the Categories as illustratively enumerated by this Court in State of Haryana vs. Bhajan Lal (1992 Suppl.(1) SCC 335. Judicial process is a solemn proceeding which cannot be allowed to be converted into an instrument of operation or harassment. When there are material to indicate that a criminal proceeding is manifestly attended with mala fide and proceeding is maliciously instituted with an ulterior motive, the High Court will not hesitate in exercise of its jurisdiction under Section 482 Cr.P.C. to quash the proceeding under Category 7 as enumerated in State of Haryana vs. Bhajan Lal, which is to the following effect:

“(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.”

In the facts and circumstances of the present case, repeated complaints filed by complainant-Opposite Party No. 2



against the petitioners on same and similar grounds, is an abuse of the process of court. Proceeding of the court cannot be allowed to be made a tool for harassment and persecution. The complaint filed by Opposite Party No. 2 had been examined at various levels and had been found to be false and frivolous, as such continuance of present proceeding against the petitioners will amount to an abuse of the process of court.

The order dated 25.07.2014 taking cognizance against the petitioners as well as entire proceeding arising out of Complaint Case No. 1823C of 2013 is quashed.

This petition is allowed.

(S. Kumar, J)

ranjan/-

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	11.11.2017
Transmission Date	11.11.2017

