

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.15542 of 2013

Arising Out of PS.Case No. -287 Year- 2012 Thana -SAHARSA COMPLAINT CASE District-
SAHARSA

=====

1. Arvind Kumar @ Arbind Bhagat son of Lakshmi Bhagat
2. Sangita Kumari @ Sangita Devi daughter of Lakshmi Bhagat
Both are resident of Mohalla - Purani Bazar, P.O. - Simri Bakhtiyarpur,
P.S.-Bakhtiyarpur, District - Saharsa

.... Petitioner/s

Versus

1. State of Bihar
2. Vinod Choudhary son of Chhotelal Choudhary, resident of Mohalla - Purani
Bazar, P.O. - Simri Bakhtiyarpur, P.S.-Bakhtiyarpur District - Saharsa

.... Opposite Party/s

=====

Appearance :

For the Petitioner/s : Mr.Manoj Kumar Pandey, Advocate
For the State : Mr. Jharkhandi Upadhyay, A.P.P.

=====

CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 20-06-2017

This application under Section 482 of the Code of Criminal Procedure (for short 'CrPC') has been filed for quashing of the order dated 28.01.2013 passed by the learned Judicial Magistrate, 1st Class, Saharsa in Complaint Case No.287 of 2012 whereby finding a prima facie case under Sections 323 and 504 of the Indian Penal Code the petitioners have been summoned to face trial.

2. The complainant has alleged in the complaint that on 22.02.2012 while he was at his house the accused persons came there and started abusing him and urinated on his person. He has alleged that in past also he had instituted two cases against the petitioners who are dreaded criminals and are associated with anti social elements.



3. It is contended by the learned counsel for the petitioners that the opposite party no.2 had filed Complaint case no. 74C of 2012 and Bakhtiyarpur P.S. Case No.122 of 2012 against the petitioners prior to the institution of the present complaint. It is contended that the date of occurrence in Complaint Case No.74C of 2012 was shown as 21.01.2010 to till date though the case was filed on 16.01.2012 whereas the date of occurrence in Bakhtiyarpur P.S. Case No.122 of 2012 was shown as 08.02.2012 and the date of occurrence in the present case has been shown as 22.02.2012. It is contended that in the first complaint case cognizance was taken under Sections 323 and 504 of the Indian Penal Code and the accusation was explained to the petitioner on 07.04.2014 but thereafter no evidence was brought by the complainant as a result of which vide order dated 03.02.2015 the Court of Magistrate acquitted him under Section 256 of the CrPC. In Bakhtiyarpur P.S. Case No.122 of 2012 the police after investigation submitted final report in favour of the petitioner as the case was found to be false but on the basis of the protest petition which was treated as complaint case no.334(C) of 2013 the petitioners were summoned to face trial. However, they were acquitted in that case also by the Court of Magistrate under Section 256 of the CrPC. It is contended that the complainant of the present case is in habit of filing false cases against the petitioners to harass them and to put pressure upon them to extract



money.

4. It is further contended by the learned counsel for the petitioners that petitioner no.1 is the President of PACS in Simri Bakhtiyarpur and petitioner no.2 is Assistant Manager of PACS in the same Panchayat. The complainant was elected to the post of Member, Panchayat Committee, PACS in Simri Bakhtiyarpur. He was making pressure on petitioner no.1 for electing him illegally to the post of Assistant Manager in the Panchayat which the petitioner was not ready to do as appointment to this post was made by the Members of the Committee after passing a resolution but the complainant started threatening the petitioners that if they do not appoint the complainant to the post he would implicate the petitioners in a false criminal case as he was member of scheduled castes community. It is contended that since the petitioner no.1 being head of the PACS in the Panchayat did not fulfill his illegal demand, the complainant has implicated the petitioners in the present false case in order to black mail them as also to put pressure upon them.

5. Despite valid service of notice, the opposite party no.2 has chosen not to contest the matter.

6. Mr. Jharkhandi Upadhyay, learned Additional Public Prosecutor for the State after going through the materials available on record has submitted that though allegations have been made in the



complaint against the petitioners in the background of the fact of the earlier cases instituted against the petitioners by the complainant, the bona fide of the complainant is clearly in doubts.

7. I have heard learned counsel for the parties and perused the record.

8. It would be evident from perusal of the complaint that some sort of animosity is existing from before. It also stands admitted that the complainant had instituted two other cases against the petitioners in past. On investigation in one case the police filed final report finding the accusation to be false and when the matter was proceeded on complaint the complainant chose not to adduce evidence. Both the complaint cases launched by the complainant earlier ended in acquittal on account of non-appearance of the complainant under Section 256 of the CrPC. The complainant has deliberately avoided to appear before the court in the present case.

9. Considering the conduct of the complainant in past there appears to be substance in the submissions of the petitioners. The complainant is pursuing the motivated litigation against the petitioner due to personal vendetta.

10. In State of Haryana and Others vs. Bhajan Lal and Others [1992 Supp.(1) SCC 335] in sub-paragraph (7) the Supreme Court held that 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, the court in exercise of power conferred under Section 482 of the CrPC would be justified in quashing the criminal proceeding.

11. Further, in the case of **Chandran Ratnaswami vs. K.C. Palaniswamy and Others [(2013)6 SCC 740]** the Supreme Court held that a court proceeding ought not to be permitted to degenerate into a weapon of harassment or persecution.

12. While referring to the case of State of Haryana and Others vs. Bhajan Lal and Others (supra), the Supreme Court in **State of Haryana vs. L. Muniswamy [(1997) 2 SCC 699]** observed as under:

“7. In the exercise of this wholesome power, the High Court is entitled to quash a proceeding if it comes to the conclusion that allowing the proceeding to continue would be an abuse of the process of the Court or that the ends of justice require that the proceeding ought to be quashed. The saving of the High Court’s inherent powers, both in civil and criminal matters, is designed to achieve a salutary public purpose which is that a court proceeding ought not to be permitted to degenerate into a weapon of harassment or persecution. In a criminal case, the veiled object behind a lame prosecution, the very nature of the material on which the structure of the prosecution rests and the like would justify the High Court in quashing the proceeding in the interest of justice. The ends of justice are higher than the ends of mere law though justice has got to be administered according to laws



made by the legislature. The compelling necessity for making these observations is that without a proper realization of the object and purpose of the provision which seeks to save the inherent powers of the High Court to do justice, between the State and its subjects, it would be impossible to appreciate the width and contours of that salient jurisdiction.”

13. For the reasons stated above, in the light of the ratio laid down by the Supreme Court in the aforementioned decisions, in the considered opinion of this Court allowing the prosecution to continue as against the petitioners would amount to a gross abuse of the process of the court.

14. In the result, the impugned order dated 28.01.2013 passed by the learned Judicial Magistrate, 1st Class, Saharsa passed in Complaint Case No.287 of 2012 is hereby quashed.

15. The application stands allowed.

(Ashwani Kumar Singh, J)

Md.S./-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	28.06.2017
Transmission Date	

