

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.27333 of 2013

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Baleshwar Prasad S/O Deodhari Prasad Resident Of Village- Dumari, P.S.-
Manjhi, District- Saran, Chapra, Presently Posted as Deputy Collector, Gopalganj,
District- Gopalganj

.... Petitioner

Versus

1. The State of Bihar
2. Laxman Prasad S/O Late Ganesh Prasad Resident Of Village- Maunia Chauk,
Ward No. 12, P.S.- Gopalganj, District- Gopalganj

.... Opposite Parties

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Appearance :

For the Petitioner : Mr. Ajay Kumar Thakur, Advocate.
: Mr. Akhilesh Kumar, Advocate
For the Opposite Parties : Mr. Jogendra Kumar, APP

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CORAM: HONOURABLE MR. JUSTICE SANJAY KUMAR

ORAL JUDGMENT

Date: 08-09-2017

This application under Section 482 of the Cr.P.C. has been filed to quash the order dated 26.05.2012 passed by Judicial Magistrate, Ist Class, Gopalganj in Trial No.3626 of 2012 arising out of Complaint Case No.772 of 2011 whereby and whereunder the learned Magistrate finding prima-facie case for the offence under Sections 323, 341 and 427/34 of the IPC ordered for issuance of summons against the petitioner.

2. Heard and perused the record.

3. The Opposite Party No.2 filed a complaint case on the file of CJM, Gopalganj alleging inter-alia that on 26.04.2011 at about 4 P.M. this petitioner and other co-accused came near his land and



forcibly drained water in his field and thereby damaged his standing crop. The complaint raised protest whereupon the petitioner abused and assaulted the complainant and also snatched gold chain worth Rs.20,000/-. This petitioner lodged a false case against the complainant and sent him to jail.

4. The learned counsel for the petitioner submits that the petitioner was posted as Deputy Collector in Gopalganj. He was also holding the charge of Executive Officer, Nagar Parishad, Gopalganj. It has been further submitted that heavy water had accumulated near the place of occurrence on road which was under municipal area. The petitioner was working as Circle Officer at Dawath and he along with Municipal Staffs had visited at the place of occurrence to get the road cleared and so the act was done in discharge of official duty and so without sanction under Section 197 of the Cr.P.C. the prosecution of the petitioner is not sustainable. He further submits that from the allegation no offence under section 422 or 504 of the IPC is not made out. The learned Magistrate has passed the impugned order without applying judicial mind and so the impugned order is fit to be quashed.

5. The learned APP opposed the submissions.

6. On perusal of the impugned order and the documents available on record, I find that the petitioner was posted at Deputy Collector at Gopalganj. He was Incharge of Executive Officer, Nagar



Parishad also and in discharge of his official duty he had visited at the place of occurrence for seeing the work of removing water from the road by Municipal Staffs. The Opposite Party No.2 reached there and indulged in scuffle for which the petitioner lodged FIR bearing Gopalganj P.S.Case No.120 of 2011 on the same day. The Opposite Party No.2 however filed complaint case on the following day which shows that it was lodged out of vengeance.

7. The principles relating to exercise of jurisdiction under section 482 of the Cr.P.C. to quash the complaint and criminal prosecution have been considered by the Apex Court in several decision. In State of Haryana and others vs. Bhajan Lal and others [1992 Supp (1) SCC 335] certain parameters have been pointed out in paragraph 102 by the Supreme Court under which prosecution launched on a complaint or FIR may be quashed in exercise of jurisdiction under section 482 of the Cr.P.C.. It reads 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 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."

8. On perusal of complaint petition, impugned order and annexures enclosed with this application, I find that this petitioner was posted as Deputy Collector at Gopalganj and on the date of occurrence he had visited at the place of occurrence in the capacity of Executive Officer, Nagar Parishad in connection with discharge of his official duty. The petitioner being Govt. servant, no cognizance could have been taken in absence of sanction under Section 197(1) of the Cr.P.C. As such the cognizance of the petitioner for want of sanction under Section 197(1) of the Cr.P.C. is not sustainable. Besides that the complaint case by Opposite Party No.2 has been filed subsequent to the FIR lodged by the petitioner. This act of Opposite Party No.2 shows that the complaint case was maliciously filed with an ulterior motive for wreaking vengeance on the accused. The present case is squarely covered by the guidelines of Hon'ble Apex Court given at sub para 7 of para 102 of State of Haryana and others vs. Bhajan Lal and others (Supra)

9. In view of discussions made above and principles laid down by the Supreme Court, the order dated 26.05.2012 passed in Complaint Case No. 772 of 2011 and the criminal prosecution of this



petitioner is hereby quashed.

10. This application is, accordingly, allowed.

(Sanjay Kumar, J)

B.Kr./-

AFR/NAFR	NAFR
CAV DATE	
Uploading Date	13.09.2017
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