IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.34626 of 2014

Arising Out of PS.Case No. -3357 Year- 2010 Thana -SARAN COMPLAINT CASE District-SARAN

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1. Kapileshwar Singh son of Late Agar Singh, resident of village - Shahpur, P.O.+P.S. - Sonpur, Distt. -Saran .
2. Pramod Kumar @ Pramod Singh Son of Sri Kapileshwar Singh, resident of village - Shahpur, P.O.+P.S. - Sonpur, Distt.-Saran .

.... Petitioner/s

Versus

1. The State of Bihar.
2. Raghu Nandan Sah son of Late Chethru Sah, resident of village – Shahpur, PO + PS-Sonpur, District-Saran, Pin-841101.

.... Opposite Party/s

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Appearance :
For the Petitioner/s : Mr. Sanjay Kr. Griyaphey and Surya Kant Singh, Advs.
For the O.P. No. 2 : Mr. Atul Kumar Pandey, Advocate
For the State Mr. Shyam Bihari Singh, APP

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CORAM: HONOURABLE MR. JUSTICE SANJAY KUMAR
ORAL JUDGMENT
Date: 22-09-2017

1. This criminal miscellaneous application under section 482 of the Code of Criminal Procedure has been filed to quash the order dated 22nd January 2014 passed by learned *Ad hoc* Additional Sessions Judge-V, Saran at Chapra in Criminal Revision No. 154 of 2013 and the order dated 21st March 2013 passed by the learned Judicial Magistrate 1st Class, Saran at Chapra in Trial No. 2421 of 2013 (arising out of Complaint Case No.3357 of 2010).

2. Heard learned counsel for the petitioners, learned counsel for the opposite party no. 2 and Additional Public Prosecutor for the State.

3. The opposite party no. 2 filed a complaint petition on the file of learned Chief Judicial Magistrate alleging *inter alia* that he received an amount of Rs.5,000/- as loan from the petitioner no. 1 and had executed a deed of agreement on a 'Non-Judicial Stamp' paper of Rs.10/- in his own pen agreeing therein to return the loan amount after receiving payment from Railway. The petitioners fraudulently converted the figure of Rs.5000 into Rs.50000 and realized Rs.50,000/- forcibly under threat and coercion from him. The petitioners have, thus, committed fraud and forgery. The learned Court below enquired into the matter under section 202 of the Code of Criminal Procedure and finding *prima facie* case, took cognizance against the petitioners. The said cognizance order was challenged before the learned Sessions Judge by filing Criminal Revision No. 154 of 2013, which was heard and dismissed by learned *Ad hoc* Additional Sessions Judge-V, Saran, Chapra on 22nd January 2014.

4. On perusal of complaint petition, counter affidavit and the documents placed on record, I find that the complainant is a retired Railway employee. He being in need of money executed a mortgage deed on 08.11.2007 in favour of wife of petitioner no. 1 with respect to 8 kattha 5 dhur land of plot no. 214 -216 of khata no 14-17 of village Shahpur, PS-Sonpur, District-Saran after receipt of Rs. 1,50,000/- on 08.11.2007. The learned counsel submitted that at the time of admitting its registration before the Sub-Registrar, the complainant demanded Rs.50,000/- more in order to meet his need as the amount of Rs.1,50,000/- was not sufficient. The petitioners agreed to pay the said amount of Rs.50,000/- for which an additional document was executed by the complainant. The document on record shows that the complainant purchased a Non-Judicial Stamp of Rs.10/- and executed a receipt/deed by way of agreement on the same day i.e. on 13.11.2007 on which date the mortgage deed was registered. It further appears that the said amount of Rs. 50,000/- was returned to the petitioner no. 1 on 01.11.2010 and the petitioner no. 1 made an endorsement in his pen on the same day as regards receiving of amount of Rs.50,000/-. The said agreement deed and mortgage deeds were returned to the complainant. After receiving of both the documents, the complainant filed the complaint case against the petitioners on 15.11.2010 i.e. after two weeks of making payment. The complainant has not mentioned anything about the registered deed of conditional sale, which was registered on the same day by the complainant. He had received an amount of Rs.1,50,000/- against the said mortgage deed (conditional sale deed) dated 08.11.2010, which was executed in favour of the wife of petitioner no. 1. Both the documents were executed/registered on 13.11.2007 and after three years of taking the said loan and 15 days of return of money, the complainant has filed the complaint case. The complainant has not come with clean hand by explaining the circumstances under which the amount was taken. He has taken a loan of Rs.2,00,000/- from the petitioners' family. In both the documents, the need of money for taking loan has been explained in different manner. The petitioner was a Railway employee and he had mortgaged his landed property for taking loan of Rs.1,50,000/-. The said amount was not sufficient to meet his need and so he agreed to admit execution of mortgage deed only on giving additional loan of Rs.5,000/-. There is no convincing reason of taking such a meager amount of Rs.5,000/- by a Railway employee. The documents were returned to complainant and after two weeks, he has alleged that the petitioners forcibly realized Rs.50,000/- instead of Rs.5,000/- and committed fraud and forgery in the said agreement paper.

5. As seen above the complainant had executed two documents on 13.11.2007. He had executed a mortgage deed on 08.11.2007 after taking amount of Rs.1,50,000/-, but its execution was admitted before the Sub-Registrar after five days of execution of the said document. The second agreement taking loan of an amount of Rs.50,000/- was executed on 13.11.2007 on which the registered deed of mortgage was executed. It appears that the complainant with ulterior motive, has filed the complaint petition maliciously and so, the criminal prosecution of these petitioners appears to be an abuse of process of Court.

6. The principles relating to exercise of jurisdiction under section 482 of the Code of Criminal Procedure to quash the complaint and criminal prosecution have been considered by the Hon'ble Apex Court in several decisions. In ***State of Haryana v. Bhajan Lal*** **(AIR 1992 S.C. 604),** at para 108 the Apex Court has given following guidelines:

> **"108** 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:
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> (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.
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> (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.
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> (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.
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> (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.
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> (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."

7. In view of above discussion and materials placed on record I find that the present case is squarely covered by clause 5 and 7 of the guidelines given by the Hon'ble Apex Court in Bhajan Lal case (supra).

8. Considering the entire facts and circumstances of the case and in view of the guidelines given by the Hon'ble Supreme

Court, order dated 22nd January 2014 passed in Criminal Revision No. 154 of 2013 and the order dated 21st March 2013 passed in Trial No. 2421 of 2013 (arising out of Complaint Case No.3357 of 2010) as well as criminal prosecution of these petitioners, is hereby quashed.

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

(Sanjay Kumar, J)

Mahesh/-

AFR/NAFR	NAFR
CAV DATE	N/A
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