

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.38330 of 2011

Arising Out of PS.Case No. -0 Year- null Thana -null District- KATIHAR

- =====
1. Bipin Sah
 2. Arun Sah
 3. Binod Sah, all three sons of Kartik
 4. Kartik Sah, son of Lat Bigli Sah
 5. Bhullo Devi, W/O Kartik Sah
 6. Nutan Devi, W/O Bipin Sah
 7. Soni Devi, W/O Arun Sah

All residents of Village-Gopi Nagar, P.S.-Kadwa, District-Katihar.

.... Petitioners

Versus

1. The State Of Bihar
2. Chamni Devi, W/O Krityanand Sharma, Gopi Nagar, P.S.-Kadwa, District-Katihar.

.... Opposite Parties

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Appearance :

For the Petitioner/s	:	Mr. Bimal Kumar, Advocate Mr. Birendra Kumar, Advocate Mrs. Maruti Kumari, Advocate
For the Opposite Party/s	:	Mr. Md. Fahinuddin, APP

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CORAM: HONOURABLE JUSTICE SMT. NILU AGRAWAL

C.A.V. JUDGMENT

Date: 17-05-2017

Heard learned counsel for the petitioners, learned APP
for the State and learned counsel appearing for opposite party no. 2.

2. The present application has been filed under Section
482 of the Code of Criminal Procedure (hereinafter referred to as the
Cr.P.C.) for quashing of the order dated 13.06.2011, passed by
learned Judicial Magistrate, 1st Class, Katihar in C.A. No. 1218/2010
whereby and whereunder cognizance has been taken against the
petitioner under Sections 147, 448, 379, 354, 498, 504, 34 of the



Indian Penal Code with further prayer to quash further proceedings arising out of the aforesaid complaint case.

3. The brief facts of the case is that opposite party no. 2 Chamni Devi filed a complaint before the court of learned Chief Judicial Magistrate, Katihar, alleging therein inter alia, that she is a poor lady and earns her livelihood working as a labourer. It is alleged that on 08.04.2010 at 12.00 P.M. the petitioners armed with weapons entered her house, abused her, destroyed her thatched house and on stopping them to do so they made her drink night soil and took Rs. 35,000/-. Petitioner nos. 1 and 3 tried to outrage her modesty and when her husband Krityanand Sharma and sons Bablu Sharma and Ashok Sharma came to the house in the courtyard, the petitioners badly assaulted them, as a result of which, her husband received injury on the neck but with the intervention of the villagers the life of her husband and sons were saved. The petitioners while fleeing away from the place of occurrence threatened them of dire consequences if police was informed.

4. The complaint was filed on 06.05.2010 before the learned Chief Judicial Magistrate, Katihar, who made over the case under Section 192(1) Cr.P.C. to the court of Sri A.V. Singh, learned Judicial Magistrate, 1st Class, Katihar, who pursuant to recording of statement of the complainant on oath and examination of witnesses



under Section 202 Cr.P.C. ordered for issuance of process under Section 204 Cr.P.C. while taking cognizance against the petitioners by order dated 13.06.2011, which order is under challenge before this Court.

5. It is contended on behalf of the petitioners that the present complaint has been instituted making false allegation after a delay of nearly one month, no plausible explanation has been given for such delay and is a counter-blast and afterthought of the earlier police case lodged by the petitioner no. 1 against opposite party no. 2 and her husband and sons, hence, deserves to be quashed. The said police case being Kadwa P.S. Case No. 67/10 dated 08.04.2010 (Annexure-2) is of the same date of the alleged occurrence under Sections 341, 342, 323, 509, 379, 307 and 34 of the Indian Penal Code. It is further submitted that the petitioners and opposite party no. 2 are neighbours and on the alleged date of occurrence on 08.04.2010 when the Mukhiya and other punches were on their official duty of erecting pillars, sons of opposite party no. 2 i.e. Bablu Sharma and Ashok Sharma were removing the pillars and when the mother of petitioner no. 1 tried to stop them, opposite party no. 2, her husband and sons assaulted her and also threatened with dire consequences. He, thus, submits that the matter relates to civil dispute between the parties. They being neighbours and dispute



being the land situated in front of the house of both petitioners and opposite party no. 2. It is submitted that petitioner no. 1 had also lodged Sanha No. 708/10 before the learned Chief Judicial Magistrate, Katihar on 11.03.2010 (Annexure-5) i.e. nearly a month before the alleged date of occurrence that the petitioners are being threatened by opposite party no. 2 of dire consequences. It is submitted that a protest petition was also filed by petitioner no. 1 bearing G.R. No. 719/2010 on 16.04.2010 (Annexure-3) making the same allegation against opposite party no. 2 and her husband and sons. He submits that opposite party no. 2 had also moved before the Superintendent of Police, Katihar on 12.04.2010 against the petitioners making the same allegations, which was enquired into by the Sub-Inspector of Kadwa P.S., who submitted his report before the Superintendent of Police, Katihar stating therein that after enquiry from the local villagers no such case was found to be true, which is Annexures-4 and 4/1 of the petition. He, thus, contends that taking into consideration all the relevant materials and facts the continuation of the prosecution as against the petitioners would amount to gross abuse of the process of the court and would also amount to grave miscarriage of justice.

6. Learned counsel for opposite party no. 2 submits that a prima facie case is made out against the petitioners, hence, the



order of cognizance dated 13.06.2011 calls for no interference.

7. Learned counsel for the State also adopts the submission made on behalf of opposite party no. 2.

8. Having heard the rival submissions made on behalf of the parties, I would like to first consider whether the averments made in the complaint, even assuming to be true, can allow the prosecution to continue as against the petitioners or would amount to gross abuse of the process of the Court. The ambit and scope of the inherent power under Section 482 of the Cr.P.C. for quashing the criminal proceedings has been discussed in paragraph 102 of the judgment rendered in the case of **State of Haryana and others Vs. Bhajan Lal and others** since reported in **1992 Supp (1) Supreme Court Cases 335**, wherein sub-paragraph (7) specifically deals with a case where a criminal proceeding is maliciously instituted with an ulterior motive for wreaking vengeance and with a view to spite him due to private and personal grudge, which is quoted hereunder:

“(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.”



Further in the case of **Chandran Ratnaswami Vs. K.C. Palanisamy and others** along with analogous cases since reported in **(2013) 6 Supreme Court Cases 740**, Hon"ble Apex Court has held that a court proceeding ought not to be permitted to degenerate into a weapon of harassment or persecution. While referring to the case of **State of Haryana and others Vs. Bhajan Lal and others (supra)**, Hon"ble Apex Court has also referred to the case of **State of Karnataka Vs. L. Muniswamy** since reported in **(1977) 2 SCC 699**, paragraph 7 of which is quoted as hereunder:

“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 realisation 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.”

In the case of **Indian Oil Corporation vrs. NEPC India Ltd.**, since reported in **(2006) 6 SCC 736**, Hon"ble Apex Court has again cautioned about a growing tendency in business circles to convert purely civil disputes into criminal cases. The Court noticed the prevalent impression that civil law remedies are time consuming and do not adequately protect the interests of lenders/creditors. In fact in paragraph 13 of judgment it has been held as follows:

“13. ... Any effort to settle civil disputes and claims, which do not involve any criminal offence, by applying pressure through criminal prosecution should be deprecated and discouraged.”



Further in the case of **Inder Mohan Goswami vrs. State of Uttaranchal** since reported in (2007) 12 SCC 1, the Hon'ble Apex Court after considering the series of decisions at paragraph 46 observed thus:

“46. The court must ensure that criminal prosecution is not used as an instrument of harassment or for seeking private vendetta or with an ulterior motive to pressurise the accused. On analysis of the aforementioned cases, we are of the opinion that it is neither possible nor desirable to lay down an inflexible rule that would govern the exercise of inherent jurisdiction. Inherent jurisdiction of the High Courts under Section 482 CrPC though wide has to be exercised sparingly, carefully and with caution and only when it is justified by the tests specifically laid down in the statute itself and in the aforementioned cases. In view of the settled legal position, the impugned judgment cannot be sustained.”

Further, in the case of M/s. Eicher Tractor Ltd. and Ors. Vs. Harihar Singh and Anr. since reported in 2008(8) Supreme 559, in paragraphs 5, 8 it has been held thus :

“5. Exercise of power under Section 482 of the Code in a case of this nature is an exception and not the rule. The section does



not confer any new powers on the High Court. It only saves the inherent power which the Court possessed before the enactment of the Code. It envisages three circumstances under which the inherent jurisdiction may be exercised, namely, (i) to give effect to an order under the Code, (ii) to prevent abuse of the process of court, and (iii) to otherwise secure the ends of justice. It is neither possible nor desirable to lay down any inflexible rule which would govern the exercise of inherent jurisdiction. No legislative enactment dealing with procedure can provide for all cases that may possibly arise. Courts, therefore, have inherent powers apart from express provisions of law which are necessary for proper discharge of functions and duties imposed upon them by law. That is the doctrine which finds expression in the section which merely recognizes and preserves inherent powers of the High Courts. All courts, whether civil or criminal, possess, in the absence of any express provision, as inherent in their constitution, all such powers as are necessary to do the right and to undo a wrong in the course of administration of justice on the principle *quando lex aliquid alicui concedit*,



concedere videtur id sine quo res ipsa esse non potest (when the law gives a person anything it gives him that without which it cannot exist). While exercising powers under the section, the Court does not function as a court of appeal or revision. Inherent jurisdiction under the section though wide has to be exercised sparingly, carefully and with caution and only when such exercise is justified by the tests specifically laid down in the section itself. It is to be exercised *ex debito justitiae* to do real and substantial justice for the administration of which alone courts exist. Authority of the court exists for advancement of justice and if any attempt is made to abuse that authority so as to produce injustice, the court has power to prevent such abuse. It would be an abuse of process of the court to allow any action which would result in injustice and prevent promotion of justice. In exercise of the powers, court would be justified to quash any proceeding if it finds that initiation/continuance of it amounts to abuse of the process of court or quashing of these proceedings would otherwise serve the ends of justice. When no offence is disclosed by the complaint, the court may examine the



question of fact. When a complaint is sought to be quashed, it is permissible to look into the materials to assess what the complainant has alleged and whether any offence is made out even if the allegations are accepted in toto.

8. As noted above, the powers possessed by the High Court under [Section 482](#) of the Code are very wide and the very plenitude of the power requires great caution in its exercise. Court must be careful to see that its decision in exercise of this power is based on sound principles. The inherent power should not be exercised to stifle a legitimate prosecution. The High Court being the highest court of a State should normally refrain from giving a prima facie decision in a case where the entire facts are incomplete and hazy, more so, when the evidence has not been collected and produced before the Court and the issues involved, whether factual or legal, are of magnitude and cannot be seen in their true perspective without sufficient material. Of course, no hard-and-fast rule can be laid down in regard to cases in which the High Court will exercise its extraordinary jurisdiction of quashing the proceedings at any stage. It would not be proper for the



High Court to analyse the case of the complainant in the light of all probabilities in order to determine whether a conviction would be sustainable and on such premises, arrive at a conclusion that the proceedings are to be quashed. It would be erroneous to assess the material before it and conclude that the complaint cannot be proceeded with. In proceedings instituted on complaint, exercise of the inherent powers to quash the proceedings is called for only in a case where the complaint does not disclose any offence or is frivolous, vexatious or oppressive. If the allegations set out in the complaint do not constitute the offence of which cognizance has been taken by the Magistrate, it is open to the High Court to quash the same in exercise of the inherent powers under [Section 482](#) of the Code. It is not, however, necessary that there should be meticulous analysis of the case before the trial to find out whether the case would end in conviction or acquittal. The complaint has to be read as a whole. If it appears that on consideration of the allegations in the light of the statement made on oath of the complainant that the ingredients of the offence or offences are disclosed and there is no material to show



that the complaint is mala fide, frivolous or vexatious, in that event there would be no justification for interference by the High Court. When an information is lodged at the police station and an offence is registered, then the mala fides of the informant would be of secondary importance. It is the material collected during the investigation and evidence led in the court which decides the fate of the accused person. The allegations of mala fides against the informant are of no consequence and cannot by itself be the basis for quashing the proceedings.”

9. The case at hand squarely falls within the parameters indicated in category (7) in the case of Bhajan Lal’s case (supra). The factual scenario as noted above clearly shows that the complaint case was filed and initiated as a counter-blast to the proceedings initiated by the petitioners. Thus, the criminal cases having overwhelmingly and predominantly civil flavour stand on a different footing for purpose of quashing, particularly offence arising out of civil dispute, which is basically private or personal in nature and in the interest of justice to continue with the criminal proceeding would tantamount to gross miscarriage of justice.

10. For the reasons stated above, allowing the



prosecution to continue as against the petitioners would amount to gross abuse of the process of the Court.

11. In the result, the application is allowed. Order dated 13.06.2011, passed by learned Judicial Magistrate 1st Class in C.A. No. 1218/2010 as well as the entire proceedings in the aforesaid complaint is hereby quashed.

12. The Registry to return the lower court records.

(Nilu Agrawal, J)

Rajesh/-

AFR/NAFR	AFR
CAV DATE	10.05.2017
Uploading Date	19.05.2017
Transmission Date	NA

