

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No. 43651 of 2011

Arising Out of PS. Case No.-430 Year-2009 Thana- Samastipur District- Samastipur

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1. Munni Devi wife of Sohan Ram
 2. Geeta Devi @ Hiya Devi wife of Krishna Ram
- Both are resident of Mohalla- Rahamganj, P.S.- Laheriasarai,
District- Darbhanga.

... .. Petitioners

Versus

1. The State of Bihar
2. Leela Devi wife of Ram Prakash Ram Resident of Railway Quarter No. 10/5
(G) Madhuri Chouk, P.S.- Samastipur Town, District- Samastipur.

... .. Opposite Parties

Appearance :

For the Petitioner/s :	Mr. Manoj Kumar Jha
For the Opposite Party/s :	Mr. D.P.Tiwary (APP)
	Mr. Ashok Kumar Mishra

CORAM: HONOURABLE MR. JUSTICE RAKESH KUMAR
ORAL JUDGMENT

Date : 11-09-2017

Heard Sri Manoj Kumar Jha, learned counsel for the petitioners, Sri Damodar Prasad Tiwary, learned Addl. Public Prosecutor as well as Sri Ashok Kumar Mishra, learned counsel for the informant.

2. Two petitioners have approached this Court invoking its inherent jurisdiction under Section 482 of the Code of Criminal Procedure, 1973, with a prayer to quash an order dated 30-06-2011 passed by Sri R.K.Singh No. 3, learned Judicial Magistrate 1st Class, Samastipur (hereinafter referred to as ‘Magistrate’) in Samastipur Town P.S. Case No. 430 of 2009,



G.R. No. 1466 of 2009, corresponding to T.R. No. 1951 of 2011. By the said order, the learned Magistrate, after receiving supplementary charge-sheet and examining the case diary, has passed the order of cognizance for offence under Sections 406, 420, 467, 468, 471, 34 of the Indian Penal Code and directed for summoning the accused persons.

3. Short fact of the case is that the opposite party no. 2 had filed a written complaint before the officer incharge, Samastipur Town Police Station alleging therein commission of fraud against six accused persons. It was alleged that accused persons had fraudulently got a land registered in their favour, whereas, payment was made by the informant/opposite party no. 2. After registering F.I.R., police investigated the case. During investigation, two chargesheets were submitted and finally, by the impugned order, cognizance was taken and accused persons were summoned.

4. Learned counsel for petitioners submits that the fact disclosed in the F.I.R. was civil in nature, however; colour of criminal offence was given. Learned counsel for petitioners further tried to persuade the Court to examine **Annexure – 3**, which is a photocopy of membership of a cooperative society in favour of petitioner no. 1. He has further brought on record a



photocopy of deed of absolute sale and submits that the alleged land was registered in favour of the petitioner no. 1. He has also referred to number of other documents including a copy of receipt of holding tax and by filing supplementary affidavit, he has brought on record a copy of plaint in Title Suit No. 135 of 2013 (**Annexure - 7**) filed by the informant/opposite party no. 2 regarding dispute in respect of the same land. Learned counsel for petitioners tried to persuade the Court to rely on those documents and set aside the order of cognizance. Learned counsel for petitioners submits that if the Court is satisfied that proceeding was malicious, then in that event, in view of law settled by the Apex Court reported in **1992 Supp. (1) Supreme Court Cases 335 (State of Haryana vs. Bhajan Lal)**, this Court is well-competent to interfere with the said order and quash the same. Learned counsel for petitioners has also placed heavy reliance on a recent judgment of this Court, reported in **2017 (2) PLJR 923 (Ram Niwas Giri vs. State of Bihar)** and has argued that order of cognizance is liable to be set aside.

5. Learned Addl. Public Prosecutor as well as Sri Ashok Kumar Mishra, learned counsel appearing on behalf of informant/opposite party no. 2 submit that on perusal of the F.I.R. itself, cognizable offence is made out and since allegation



was of the nature of cognizable offence, F.I.R. was lodged and police, during investigation found the accusation true and submitted chargesheet. According to Sri Mishra, once police after conducting statutory investigation submitted chargesheet and learned Magistrate, in conformity with the chargesheet, has passed the order of cognizance, in normal course, the order of cognizance may not be interfered with. He further submits that it is true that certain guidelines were prescribed long back in the year 1992 by the Supreme Court in the **Bhajan Lal's case** (*supra*), but the Supreme Court has also said that interference at initial stage is to be done in exceptional cases. According to him, the fact disclosed in the F.I.R. categorically suggests commission of cognizable offence. He further submits that the plaint i.e. **Annexure 7** to the supplementary affidavit, on which petitioners have placed reliance, that was filed in the year 2013, which was the event subsequent to lodging F.I.R. Accordingly, it has been prayed to reject the present petition.

6. Besides hearing learned counsel for the parties, I have also perused the material on record. Fact remains that F.I.R. categorically discloses cognizable offence and during investigation, police had found the accusation true and thereafter, in the case, two charge-sheets were submitted and



finally, after submission of supplementary chargesheet, the petitioners have been summoned by the court below. *Prima facie*, on perusal of the order of cognizance, I do not find any apparent error warranting interference.

7. So far as submission of learned counsel for petitioners that if a case is malicious, the Court can interfere at initial stage is concerned, the Court is conscious of the fact, but fact remains that in view of peculiar facts disclosed in the F.I.R., which was found during investigation true, this Court may not interfere with the order of cognizance. Even in **Bhajan Lal's case (*supra*)**, after referring to certain circumstances for interference at initial stage in a criminal case, which were incorporated in paragraph – 102 of the said judgment, in paragraph – 103 of the said judgment, the Supreme Court had given caution to the courts for interference at initial stage. It was indicated that such interference should be in exceptional cases. Paragraph no. 102 and 103 of the said judgment are quoted hereinbelow:-

“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.

103. We also give a note of caution to the effect that the power of quashing a criminal proceeding should be exercised very sparingly and with circumspection and that too in the rarest of rare cases; that the Court will not be justified in embarking upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR or the complaint and that the extraordinary or inherent powers do not confer an arbitrary jurisdiction on the court to act according to its whim or caprice.”

8. The Court is of the opinion that present case may not be categorised as such exceptional case, warranting interference. Moreover, once in the Code of Criminal Procedure, 1973, there are stages to examine the cases i.e. if there is provision for examining the discharge petition, certainly at the stage of cognizance, this Court may not delve into detail of the matter and as such, since in the order of cognizance, which has been passed in conformity with the chargesheet, there is no apparent error warranting interference and as such, I do not find any ground for interference.

9. The petition stands dismissed.

(Rakesh Kumar, J.)

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