

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.22171 of 2014

Arising Out of PS.Case No. -156 Year- 2011 Thana -PATNA COMPLAINT CASE District-
PATNA

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Niranjan Prasad @ Sanjay Prasad son of Late Manni Lal Saw resident of village
naya Tola, madhopur, Police Station - Bakhtiyarpur, District - Patna.

.... Petitioner/s

Versus

1. The State of Bihar.
2. Rajendra Prasad Yadav @ Rajendra Prasad son of Late Deodhari Prasad Yadav
resident of Mohalla Naya Tola, Madhopur, Police Station - Bakhtiyarpur, District-
Patna.

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Dr. Manoj Kumar, Adv.

For the Opposite Party/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH

ORAL JUDGMENT

Date: 21-06-2017

Heard learned counsel for the petitioner. The opposite
party no. 2 has entered his appearance through Mrs. Sucheta Yadav
and Sri Sanjiv Kumar, Advocates by filing *vakalatnama*.

The matter was passed over on account of
non-appearance of the learned counsels for opposite party no. 2.

The matter has again been called out and again,
learned counsels for opposite party no. 2 are not present.

In such view of the matter, this Court has no option
but to proceed with the matter.

Learned counsel for the petitioner submits that the
opposite party no. 2 had filed a complainant case bearing complaint
case no. 156(C) of 2011 before the learned Court of Addl. Chief



Judicial Magistrate, Barh *inter alia* alleging therein that the petitioner herein had taken a loan of Rs. 1,30,000/- from opposite party no. 2 with a promise to return the same soon. The further case of opposite party no. 2 is that upon several requests made, the petitioner failed to return the aforesaid amount of Rs. 1,30,000/-.

The opposite party no. 2 along with his complaint has annexed a document, said to have been written by the petitioner herein, wherein it has been stated that he had taken a sum of Rs. 1,30,000/- from opposite party no. 2 and he promises to pay back the same after two years. The said document also bears the signature of witnesses and is dated 02.07.2008.

Learned J.M. 1st class, Barh by order dated 29.02.2012, upon an enquiry made under Section 202 Of Code of Criminal Procedure, has found a prima facie case under Section 420 of Indian Penal Code against the petitioner and accordingly, has issued summons to the accused-petitioner for the said offence.

The petitioner has filed the present petition under Section 482 of Code of Criminal Procedure for quashing the order dated 29.02.2012, taking cognizance, passed by learned J.M. 1st class, Barh in complaint case no. 156(C) of 2011.

Learned counsel for the petitioner submits that though the matter had been settled amicably, as is apparent from the document dated 23.08.2009, Annexure-4 to the present petition, the opposite party no. 2 filed the connected complaint case no. 156(C) of



2011 without any cause of action and maliciously. Learned counsel for the petitioner further submits that at best, the present case can be said to be a case of civil dispute.

This Court vide order dated 01.07.2014 had been pleased to issue notice to opposite party no. 2 on the ground that the present complaint has been filed after the matter was compromised, hence the same is malicious.

Though, opposite party no. 2 has entered appearance before this Court but he has not questioned the genuineness of the compromise said to have been entered into between the parties, which is Annexure-4 to the present petition.

Having regard to the facts and circumstances of the case, I find that the present case, at best, can be said to be a case of civil dispute arising out of a loan transaction. It is also apparent from the records that the present case is a clear case of malicious prosecution inasmuch as after the parties had settled the matter, the opposite party no. 2 chose to file the connected complaint petition against the petitioner, obviously out of sheer greed.

In this context, it may be relevant to refer to the judgment of the Hon'ble Apex Court, reported in **1992 Supp(1) SCC 335 State of Haryana and ors. v. Bhajan Lal and ors.** wherein the Hon'ble Apex Court has laid down the guidelines and enumerated the list of kinds of cases wherein inherent power under Section 482 of Code of Criminal Procedure can be exercised.



The Hon’ble Apex Court in sub- para 7 of para 102 of the said judgment has clearly stated that “*Where a criminal proceeding is manifestly attended with malafide 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 inherent powers under Section 482 of Code of Criminal Procedure can definitely be exercised.

In view of the aforesaid judgment of the Hon’ble Apex Court rendered in the case of State of **Haryana vs. Bhajan Lal & Ors.** (supra) as well as the law settled therein, this Court is of the view that the instant case being a case of malicious prosecution deserves to be quashed.

Accordingly the present petition is allowed. The order taking cognizance dated 29.02.2012 passed by J.M. 1st class, Barh in complaint case no. 156(C) of 2011 and the proceedings enimating therefrom, including the said Complaint Case No. 156 (C) of 2011, are hereby quashed.

There shall be no order as to costs.

(Mohit Kumar Shah, J.)

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AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	23-06-2017
Transmission Date	23-06-2017

