

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.5750 of 2011

Arising Out of Complaint Case No. -1137 Year- 2009 Thana -Nawanagar District- BUXAR

1. Mahendra Pal son of Late Hazari Pal

2. Asha Devi W/o Mahendra Pal

3. Manisha Kumari @ Mansa Kumari D/o Mahendra Pal

All resident of village Keshatt, P.S. – Nawanagar, District- Buxar.

.... Petitioner/s

Versus

1. The State of Bihar

2. Uttam Pal son of Late Mahendra Pal, resident of village Kkeshatt, P.S.
Nawanagar, District- Buxar.

.... Opposite Party/s

With

Criminal Miscellaneous No. 8578 of 2012

Arising Out of Complaint Case No. -1137 Year- 2009 Thana -Nawanagar District- BUXAR

1. Naresh Pal @ Narendra Pal S/O Keso Pal R/O Vill-Chilahar, P.S.Goorathi,
Distt-Rohtas

2. Moti Lal Pal S/O Keso Pal R/O Vill-Chilahar, P.S.Goorathi, Distt-Rohtas

3. Sahendra Pal @ Satyendra Pal S/O Late Hazari Pal R/O Vill-Keshath,
P.S.Nawanagar, Distt-Buxar

4. Geeta W/O Sahendra Pal @ Satyendra Pal R/O Vill-Keshath, P.S.Nawanagar,
Distt-Buxar

.... Petitioner/s

Versus

1. The State Of Bihar

2. Uttam Pal S/O Late Mahendra Pal R/O Vill-Keshatt, P.S.Nawanagar, Distt-Buxar

.... Opposite Party/s

Appearance :

(In both the cases)

For the Petitioner/s : Mr. Arun Kumar Gupta, Adv.

For the Opposite Party/s : Mr. Madan Kumar, APP

CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 07-09-2017

The petitioners in these two cases have been summoned
to face trial for the offences punishable under Section 427 read with
34 of the Indian Penal Code (for short 'IPC') by the learned Judicial



Magistrate 1st Class, Buxar by order dated 19.08.2010 passed in Complaint Case No. 1137(C)/2009/ 1268 Tr/2010. The said summoning order dated 19.08.2010 has been challenged by the petitioners of these two cases filed under Section 482 of the Code of Criminal Procedure (for short 'Cr.P.C.').

2. The brief facts of the case are as under :-

(i) Initially a complaint was filed in the court of Chief Judicial Magistrate, Buxar, which was sent for investigation in exercise of power conferred under Section 156(3) of the Cr.P.C. pursuant to which Nawanagar P.S. Case No. 6 of 2009 was instituted under Section 436/34 of the IPC against the petitioners.

(ii) It is alleged that way back in September, 2008, in the night, the complainant was sleeping inside his house (*Marai*). He heard some sound outside his house and, when he came out, he saw that all the accused persons had surrounded his house. The accused Asha Devi and Kumari Manisha were holding containers of kerosene oil in their hand. Accused Mahendra Pal took the kerosene oil from them and, thereafter, Mahendra Pal and Sahendra Pal went towards the south west corner of his *Marai* and remaining accused persons, who were variously armed, surrounded his *Marai*. They forbade the informant not to raise alarm. In the meantime, Sahendra Pal poured kerosene oil on the *Marai* and Mahendra Pal set it on fire. The other



accused persons, who had surrounded the informant, threatened him of dire consequences. It is further stated that on alarm having been raised by the informant several persons assembled there and tried to extinguish the fire. It is alleged that several articles including rice, wheat, clothes, cash, beddings, etc. kept inside the *Marai* were reduced to ashes.

(iii) On completion of investigation, the police submitted final report holding the accusation made against the accused persons to be false.

(iv) During pendency of the police investigation, a complaint in the form of protest was filed by the opposite party no.2 in the police case.

(v) On receipt of the police report submitted under Section 173(2) of the Cr.P.C., after going through the materials available on record, the court of Magistrate accepted the final report and directed for institution of the protest petition as a separate complaint.

(vi) In the said complaint, besides the complainant, two witnesses were examined in course of inquiry conducted under Section 202 of the Cr.P.C. Thereafter, the learned Magistrate, vide order dated 19.08.2010, summoned the petitioners to face trial for the offence punishable under Section 427 read with 34 of the IPC in exercise of power conferred under Section 204 of the Cr.P.C.



3. Challenging the aforesaid order dated 19.08.2010, Mr. Arun Kumar Gupta, learned counsel appearing for the petitioners in these cases submits that the story narrated in the complaint is exactly the same as stated in the earlier complaint, which was sent to the police for investigation pursuant to which Nawanagar P.S.Case No. 6 of 2009 was registered. He has submitted that the allegations made therein were duly investigated by the police and, in course of investigation, it had transpired that the complaint was made by the complainant in retaliation to Nawanagar P.S.Case No. 117 of 2007 registered under Section 304-B and 201 of the IPC against the elder brother, mother and sister of the opposite party no.2. He has submitted that one Rekha Devi, younger sister of the petitioner no.2 Asha Devi was married to one Rambabu Pal, elder brother of the opposite party no.2 Uttam Pal. The said Rekha Devi died in other than natural circumstances in her matrimonial home and her body was disposed of pursuant to which an FIR was instituted by her father Kesho Pal against the brother, mother and sister of the complainant for the offences under Sections 304-B and 201 of the IPC. The said case was investigated upon and charge-sheet was submitted by the police.

4. He has submitted that upon investigation of Nawanagar P.S.Case No. 6 of 2009, the police came to the conclusion that the



said case was instituted only to put pressure upon the petitioners Mahendra Pal and Asha Devi so that they may not support the case registered inter alia under Section 304-B of the IPC against the brother, father and mother of the complainant-opposite party no.2. He has contended that the police in their report submitted in Nawanagar P.S.Case No.6 of 2009 has also concluded that there was no evidence of any mischief caused by fire at the place of occurrence.

5. On the basis of these submissions, learned counsel for the petitioners has submitted that the order of cognizance and summoning of the petitioners in the present case is bad in law.

6. Though noticed, neither the complainant-opposite party no.2 nor his lawyer has appeared to contest the matter.

7. Learned Additional Public Prosecutor appearing for the State has submitted that the allegations made in the complaint do attract the ingredients of the offence punishable under Section 427 of the IPC. He has submitted that the complainant has supported the allegations made in the complaint in his statement made on oath. Besides him, two other witnesses have also supported the case of the complainant in the inquiry conducted by the court under Section 202 of the Cr.P.C. He has submitted that the court of Magistrate took cognizance of the offence on the basis of the materials available on record of the complaint case and not on the basis of materials



collected by the police during investigation of Nawanagar P.S.Case No.6 of 2009. He has submitted that it was not permissible in law for the Magistrate to look into the materials collected in course of investigation of the police case. According to him, the probative value of the defence can only be appreciated by the court during trial. He has contended that in view of the nature of evidence collected during inquiry, no illegality can be found with the order impugned.

8. I have heard learned counsel for the petitioners and learned counsel for the State and perused the materials available on record including the record of Nawanagar P.S.Case No.6 of 2009, which was summoned by this Court vide order dated 28.06.2016.

9. It is true that the complainant and two witnesses examined in course of inquiry have supported the allegations made in the complaint. Learned counsel for the State is also correct in his submission that at the stage of taking cognizance of the offence, the Magistrate could not have taken into consideration the evidence collected in course of investigation of the police case. However, the same rider would not apply to this Court while exercising its power under Section 482 of the Cr.P.C. especially when a specific plea of malicious prosecution has been taken by the petitioners.

10. It would be evident from the record of the police case that the FIR was instituted on 18.01.2009. The Investigating Officer



has clearly stated that there was no objective evidence of mischief caused due to fire at the place of occurrence. The Investigating Officer has also recorded that there was no sign of fire or mark of fire on the adjacent *Marai*. In the police report submitted under Section 173(2) of the Cr.P.C., it has clearly been recorded that none of the villagers except the family members of the complainant came forward to support the allegation that the *Marai* of the complainant was set on fire. The Investigating Officer has also recorded in the police report that in course of investigation it came to light that the sister-in-law of the accused Mahendra Pal was married to the complainant's elder brother Rambabu Pal, who died in her sasural in other than natural circumstances for which the victim's family members had instituted Nawanagar P.S.Case No. 117 of 2007 on 04.09.2007 under Sections 304-B and 201 of the IPC against elder brother, mother and sister of the complainant, namely, Rambabu Pal, Kalawati Kuwar and Mamta Kumari respectively. It has also been stated in the final report submitted by the police that just in order to put pressure upon the petitioners, who are witnesses in the aforesaid Nawanagar P.S.Case No.117 of 2007, the FIR of Nawanagar P.S.Case No.6 of 2009 was instituted against the petitioners of the present case.

11. In the background of the facts stated above, I find substance in the submission of the learned counsel for the petitioners



that the instant case has maliciously been instituted against the petitioners in order to put pressure upon them so that they may not support the criminal case of dowry death instituted against the complainant's elder brother, mother and sister.

12. So far as the contention of the learned counsel for the State that the defence of the petitioners is not to be seen at this stage and that the learned Magistrate could not have seen the materials collected during police investigation is concerned, the law is that the inherent power under Section 482 of the Cr.P.C. can be exercised by this Court under three circumstances, namely,

- (a) to give effect to an order under the Cr.P.C.;
- (b) to prevent the abuse of the process of the Court; and
- (c) to otherwise secure the ends of justice.

13. In a landmark judgment in the case of *State of Haryana & Others Vs. Bhajan Lal and Others [1992 Supp (1) SCC 335]*, the Supreme Court has laid down broad guidelines for quashing criminal proceedings in exercise of powers conferred under Section 482 Cr.P.C., which are as under :-

“(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



F.I.R. 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 F.I.R. 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.”

14. Clause (7) of the aforestated guidelines states that 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, the High Court may quash the criminal proceeding under Section 482 of the Cr.P.C.

15. In the light of the discussions made hereinabove, as I have already expressed my opinion that the instant complaint appears to have been instituted maliciously by the complainant due to private and personal grudge, the case of the petitioners squarely falls within clause (7) of the guidelines issued by the Supreme Court in **Bhajan Lal** (Supra).

16. Thus, the Complaint Case No. 1137(C)/2009/ 1268 Tr/2010 pending before the learned Judicial Magistrate 1st Class, Buxar and all the proceedings emanating therefrom are hereby quashed.

17. The applications stand allowed.

(Ashwani Kumar Singh, J)

Pradeep/-

AFR/NAFR	NAFR
CAV DATE	N.A.
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