

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.31465 of 2014

Arising Out of PS.Case No. -556 Year- 2013 Thana -BEGUSARAI TOWN District- BEGUSARAI

- =====
1. Visheshwar Prasad Sahu son of late Maya Ram Sah
 2. Mahesh Sah son of Guneshwar Sah
 3. Rajendra Prasad Keshar son of Late Uchit Keshari
- All resident of village - Bakhari, P.S. Bakhari, District - Begusarai

.... Petitioner/s

Versus

1. The State of Bihar
2. Satish Kumar Saha son of Sri Visheshwar Prasad Sahu resident of Tilak Nagar, P.S. Begusarai Town, District - Begusarai

.... Opposite Party/s

=====

Appearance :

For the Petitioner/s : Mr. Ajay Kumar Thakur
Mr. Amit Kumar
Mr. Imteyaz Ahamd
For the Opposite Party/s : Mr. Jitendra Kr. Roy 1, APP

=====

CORAM: HONOURABLE MR. JUSTICE SANJAY KUMAR

ORAL JUDGMENT

Date: 06-10-2017

This application under Section 482 of the Code of Criminal Procedure has been filed to quash the order dated 14.12.2013 passed by the learned Chief Judicial Magistrate, Begusarai in Begusarai Town P.S. Case No. 556 of 2013 whereby and whereunder the learned Magistrate took cognizance for the offence under Sections 341, 323, 504, 506 and 387/34 of the Indian Penal Code against the petitioners and other co-accused mentioned in Colomn 11 of the police report.

2. Heard the learned counsel for the petitioners and the learned A.P.P. for the State. The Opposite Party No. 2 in spite of personal service did not appear to oppose this application.



3. The petitioner No. 1 is the father of the informant and the allegation is that he along with two others came at his office at Begusarai and asked the informant and his wife to join him in executing the sale deed in favour of the petitioner Nos. 2 and 3. The matter was investigated and police submitted charge-sheet against the petitioners and other co-accused.

4. The contention of the petitioners is that the petitioner No. 1 has two sons out of them one son is residing in Australia in connection with service. His second son is the informant of this case and he is residing in Begusarai district. There is bona fide land dispute between the parties. The informant has fraudulently and illegally executed a registered deed of gift with respect to the house standing over one katha 15 dhur land in favour of his three sons on 15.04.2013. The said house is valuable property situating in the market of Bakhari Bazar. The informant had no right to execute the deed of gift as the same was self-acquired land of the petitioner no. 1. The petitioner no. 1 having come to know about the execution of the gift deed and other sales deeds executed by his son filed a Partition Suit No. 414 of 2013 on 17.07.2013 for partition of ancestral as well as acquired landed property besides declaration of the deed of gift as illegal, fictitious, fraudulent inoperative and void. After filing of the said title suit, the informant has lodged the present case. It appears that the petitioners



are resident of Bakhari Bazar situating far away from the Begusarai Town. It does not appear believable that the petitioner no. 1, who is old aged father of the informant and two other petitioners, who are the tenants, would go at the place of the informant to commit the alleged crime in presence of four or five persons of the informant. The learned Magistrate has passed the cognizance order without applying judicial mind and so, the cognizance order is fit to be quashed. It further appears that the allegation of abusing, assaulting and putting the informant in fear of death or grievous hurt, appears omnibus and the case has been maliciously instituted after the filing of title suit by the petitioner No. 1 with ulterior motive for wreaking vengeance on the petitioners.

5. The principles relating to exercise of jurisdiction under section 482 of the Cr. P.C. to quash the complaint and criminal prosecution have been considered by the Supreme Court in several decisions. In State of Haryana and others vs. Bhajan Lal and others [AIR 1992 S.C. page 604] certain parameters have been pointed out at paragraph 102 by the Supreme Court under which prosecution launched in a complaint or F.I.R. may be quashed in exercise of jurisdiction under section 482 of the Cr.P.C. It reads as under:-

“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."

The present case of these petitioners squarely covered by 5 and 6 of the aforesaid guidelines given by Hon'ble Apex Court.

6. In view of the discussions made above, this application is allowed and the order dated 14.12.2013 passed by the learned Chief Judicial Magistrate, Begusarai in Begusarai Town P.S. Case No. 556 of 2013 is quashed.

(Sanjay Kumar, J)

ajay gupta/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	11.10.2017
Transmission Date	11.10.2017

