

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.29251 of 2013

Arising Out of PS.Case No. -613 Year- 2012 Thana -SARAN COMPLAINT CASE District-
SARAN

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Tribhuwan Kumar Mishra, S/o Late Ram Pravesh Mishra Resident of Village-
Banni, P.S.- Khaira, Distt.- Saran

.... Petitioner

Versus

1. The State of Bihar

2. Dinesh Ram S/o Late Suraj Ram Resident of Village- Hasanpur, P.S.- Maker,
Distt.- Saran

.... Opposite Parties

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Appearance :

For the Petitioner/s : Mr. Mukesh Kumar Singh, Advocate

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

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 04-04-2017

Heard learned counsel for the petitioner and learned
counsel for the State.

2. Despite valid service of notice, the opposite party
no.2 has chosen not to appear and contest the matter.

3. This application under Section 482 of the Code of
Criminal Procedure (for short 'CrPC') has been filed for quashing
the order dated 21.07.2012 passed by the learned Judicial Magistrate-
1st Class, Chapra in Enquiry No. 283 of 2012 arising out of



Complaint Case No. 613 of 2012 whereby finding a prima facie case under Section 323, 341, 342 and 384 of the Indian Penal Code to be made out, the petitioner has been summoned to face trial.

4. The aforesaid complaint was instituted by the opposite party no.2, Dinesh Ram on 02.03.2012. In the complaint, the complainant has stated that between the period 2001 and 2006 while he was posted as Panchayat Secretary in Kadipur block, the petitioner was the Mukhiya of the said block. The Block Development Officer of Kadipur block instituted a first information report (for short 'FIR') in which the complainant was made accused. The petitioner called him in connection with said case and forcibly obtained his signature on several papers like, coupon, voucher, stock register etc. relating to P.D.S. shop of one Bhola Sah. The complainant further stated that he reported the matter to the District Magistrate and the Deputy Development Commissioner, Saran on 7th January, 2012 in this regard. Thereafter, on 29th February, 2012, the petitioner along with 4-5 other unknown persons intercepted him and on the point of revolver, once again, he took his signature on documents like coupon, voucher, stock register etc. He was forbidden to lodge any complaint in respect of the alleged occurrence.

5. After institution of the complaint, the complainant



was examined on oath and, apart from him, three other witnesses were examined in course of inquiry conducted under Section 202 of the CrPC. Thereafter, finding a prima facie case to be made out against the petitioner, the summoning order dated 21.07.2012 was passed by the learned Magistrate, which is under challenge in the present application.

6. It is submitted by the learned counsel for the petitioner that the entire allegation made in the complaint is false and concocted. The complainant himself admits that he was made accused pursuant to an FIR instituted by the Block Development Officer, Kadipur and had come to the house of the petitioner on his own. He submits that the falsity of the complaint would be evident from the own version of the complainant that when on 7th January, 2012 itself, the signature of the complainant was obtained on coupon, voucher, stock register etc., there was no reason for the petitioner or anyone else to have obtained signature on those papers once again on 29th February, 2012. He submitted that the complainant himself was absconding in the aforesaid police case and since the petitioner being the then Mukhiya did not rescue him from being prosecuted for his alleged act of omission and commission, he has been implicated in this case falsely. He submitted that when the complainant himself was made accused in the police case instituted by the Block



Development Officer, there was no reason for the petitioner to obtain his signature on any document, specially, when the petitioner is not alleged to have been involved in any offence.

7. Learned counsel for the petitioner further submitted that there is no explanation as to why the complainant did not approach the police or file complaint in the court after the alleged incident on 7th January, 2012. He also submitted that even after the offence was repeated on 29th February, 2012, the complainant did not immediately approach the police or file complaint in the court rather, the complaint was filed after an inordinate delay on 02.03.2013. He submitted that the alleged complaint is only an afterthought and has been instituted with ulterior motive.

8. Learned counsel for the petitioner has also referred to Annexure-2 to the present application which is an official communication dated 31.05.2012 made by the Deputy Collector to Deputy Development Commissioner, Chapra wherein it is stated that on inquiry the allegations made by the complainant against the petitioner were found false.

9. On the other hand, learned counsel for the State submitted that the disputed facts cannot be taken into consideration for the purposes of quashing of a criminal case. He submitted that prima facie case is made out against the petitioner hence, the learned



Magistrate has rightly summoned him to face trial. He contended that the defence of the petitioner can only be adjudicated at the stage of trial.

10. As noted above, though validly served, the complainant-opposite party no.2 has chosen not to appear before the Court and contest the matter.

11. In the background of the submissions made above, when I carefully look to the facts of the present case, I find that there is no explanation as to why the complainant failed to report either to the police or to the court regarding the first incident, which is alleged to have taken place on 7th January, 2012. There is also no credible evidence that after the second incident, the complainant ever approached the police or on failure of the S.H.O. of the police station to register FIR, sent substance of accusation to the Superintendent of Police in writing and by post in terms of Section 154(3) of the CrPC. Further, the second incident on 29th February, 2012 was also reported belatedly on 02.03.2012 for which no explanation has been given in the complaint.

12. There is substance in the submission of the learned counsel for the petitioner that if signature was already taken on coupon, voucher, stock register etc. on 7th January, 2012, there was no reason for the petitioner to have obtained the signature of the



complainant on any such document once again on 29th February, 2012. The reason for obtaining such signatures has also not been stated anywhere in the complaint. It would also be evident from the contents of Annexure-2 to the present application that the Deputy Collector, Saran at Chapra in his letter dated 31.05.2012 reported to the Deputy Development Commissioner, Chapra that on inquiry the allegations made by the complainant were found to be false. Even the efforts made to contact the complainant in respect of the allegations failed and when they tried to consult him on phone, his mobile phone was found switched of.

13. This Court is mindful of the fact that in a criminal case, the defence of an accused is not to be considered at the stage of trial. However, while exercising jurisdiction under Section 482 of the CrPC , if false, frivolous, baseless complaint is filed under Section 200 of the CrPC, the Court may take judicial notice of an official letter written by a public servant in official capacity to another public servant specially, when the complainant in spite of valid service of notice deliberately choose not to contest the matter.

14. Section 482 of the CrPC empowers this Court to exercise its inherent powers to prevent abuse of the process of the Court. The very purpose of inherent powers in criminal jurisdiction is to prevent degeneration of the proceedings into a weapon of



harassment.

15. At this stage, it would be pertinent to note that by a series of decisions the Supreme Court has crystallized the principles underlying the High Courts extraordinary and inherent powers to quash a complaint. Suffice it to refer to the decision of the Supreme Court in **State of Haryana vs. Bhajan Lal [1992 Supp. (1) SCC 335]**, wherein it observed that for following categories of cases, extraordinary power under Section 482 of the CrPC should be utilized making it clear, however, that it was not possible to give an exhaustive list:-

“(a) 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;

(b) 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;

(c) 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;

(d) 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;

(e) 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;

(f) 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;

(g) 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.”

16. Regard being had to the materials available on record, I am of the opinion that the instant criminal proceeding has



been instituted with ulterior motive for wreaking vengeance on the accused due to private and personal grudge and the same falls within category (e) and (g) of the Bhajan Lal's case.

17. In that view of the matter, allowing the prosecution to continue would be an abuse of the process of the court.

18. Accordingly, the impugned order dated 21.07.2012 passed by the learned Judicial Magistrate-1st Class, Chapra in Enquiry No. 283 of 2012 is quashed. Consequently, the Enquiry Case No. 283 of 2012 arising out of Complaint Case No. 613 of 2012 and its entire proceedings are also quashed.

19. The application stands allowed.

(Ashwani Kumar Singh, J.)

Sanjeet/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	07.04.2017
Transmission Date	NA

