

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.1076 of 2012

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1. Ravi Shankar Dubey, son of Shambhu Dubey R/O,Vill.-Nautan,P.S.-Maharaganj,Dist.-Siwan
 2. Munna Mina, son of Mahmood Raja Mian R/O,Vill.-Nautan,P.S.-Maharaganj,Dist.-Siwan
 3. Vijay Ojha, son of Maharaj Ojha R/O,Vill.-Nautan,P.S.-Maharaganj, Dist.-Siwan

.... Petitioners

Versus

1. The State Of Bihar
2. Nagendra Prasad, son of Late Bacha Prasad, village-Nautan, P.S. G.B.Nagar, District-Siwan.

.... Opposite Parties

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Appearance :

For the Petitioners : Mr. Arun Kumar Pandey, Advocate
For the Informant : Mr. Ramchandra Sahani, Advocate
For the Opposite Party : Mr. Brij Kishore Prasad, APP

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CORAM: HONOURABLE MR. JUSTICE SANJAY KUMAR

ORAL JUDGMENT

Date: 10-10-2017

This criminal miscellaneous application under Section 482 of the Cr.P.C. has been filed to quash the order dated 29.09.2010 passed by learned SDJM, Siwan in Maharajganj P.S.Case No.77 of 2008 arising out of Complaint Case No.776 of 2008 whereby and whereunder the learned court below took cognizance against the petitioners for the offence under Sections 302/34 and 120(B) of the IPC.

2. The Opposite Party No.2 filed a complaint case against the petitioners on the file of CJM, Siwan alleging inter-alia that in the evening of 17.04.2008 these petitioners took away his full brother Shailendra Prasad by their motorcycle and on the following day, he



got information about the murder of his brother. The complainant went at the hospital and brought the dead body after postmortem. The said complaint case was filed on 30.04.2008. The copy of the complaint petition was sent to the P.S. on the basis of which the aforesaid Maharajganj P.S.Case No.77 dated 26.06.2008 was registered against the petitioners.

3. Heard learned counsel for the petitioners, learned counsel for the informant and learned APP for the State.

4. It has been submitted that the deceased was caught raid handed while committing theft. He was thrashed by a mob of villagers and on account of assault, he died at village-Nautan. In the said occurrence, another person was also beaten to death by the mob of the villagers. A police case vide Maharajganj P.S.Case No.46 of 2008 was registered against fourteen FIR named and eight to ten unknown persons on the fardbeyan of Dhana Devi, the wife of one of the deceased for the offence under Sections 302, 341, 342, 323 of the IPC and other Sections of the IPC and Section 3(1)(x) of SC/ST Act. The informant of present case is at inimical term with the petitioners as much prior to the present occurrence, the uncle of petitioner no.2 had lodged Maharajganj ((G.B.Nagar) P.S.Case No.71 of 2007 dated 09.05.2007 against the deceased (brother of the present complainant) for the offence under Sections 380, 504 and 506 of the IPC. In the said FIR, the petitioners no.1 and 3 were cited as witnesses to the



occurrence of theft. The complainant on account of lodging the case by the uncle of petitioner no2 and also on account of being witnesses to the said FIR has lodged this case with false and frivolous allegation. The matter was investigated and police submitted final form as nobody supported the complicity of these petitioners in the alleged crime. A supplementary affidavit has been filed on behalf of the petitioners wherein it has been stated that the informant had received the dead body of his brother on the following morning of his death and after two weeks of institution of Maharajganj P.S.Case No.77 of 2008, he has lodged the present complaint case. In course of investigation, a large number of witnesses have stated that the brother of Opposite Party No.2 was assaulted to death by the villagers on the spot as he was caught raid handed while committing theft. It further appears that the owner of pumping set had lodged Maharajganj P.S.Case No.46 of 2008 for the theft of his pump-set. The Opposite Party No.2 has not explained the delay of one fortnight in filing the complaint case against the present petitioners who are witnesses to the case which was instituted one year before the present occurrence. The criminal prosecution of these petitioners appears malicious in view of earlier case much after the case of the uncle of petitioner no.2.

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 Apex Court in several



decision. In State of Haryana and others vs. Bhajan Lal and others [1992 Supp (1) SCC 335] certain parameters have been pointed out in paragraph 102 by the Supreme Court under which prosecution launched in a complaint or FIR 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."

6. In view of above discussions, I find that the present complaint case has been filed by Opposite Party No.2 after two weeks of the death of his brother. A police case vide Maharajganj P.S.Case No.46 of 2008 dated 17.04.2008 was registered on the statement of widow of one of the deceased. The uncle of petitioner no.2 had lodged the case against the deceased in which petitioner nos.1 and 3 were cited as witnesses to the occurrence. The above material clearly shows that the present complainant has been lodged with an ulterior motive wreaking vengeance on the petitioners. The present case is squarely covered by the guidelines given at sub-para 7 of para 102 of Bhajan Lal case (supra).

7. In view of the above discussions, the prosecution of the petitioners appears to be abuse of the process of the Court. The order dated 29.09.2010 taking cognizance is hereby quashed and this criminal miscellaneous application is allowed.

(Sanjay Kumar, J)

B.Kr./-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	31.10.2017
Transmission Date	31.10.2017

