

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.38187 of 2014

Arising Out of PS.Case No. -1807 Year- 2011 Thana -PATNA COMPLAINT CASE District-
PATNA

=====

1. Prakash Kumar Son of Sri Bajinder Narain Singh Resident of Flat No.-101, Shiv Radhika Apartment, Post Office Road, P.S. + P.O.- Shastrinagar, in the district of Patna Presently Editor of A.B.P. News 8C- Shiv Radhika Apartment, Post Office Road, P.O. + P.S.- Shastrinagar, District- Patna

.... Petitioner/s

Versus

1. The State of Bihar
2. Md. Harun Sidiqui Son of Md. Idrish CAC Incharge, PSCL India Limited, 3rd Floor, Shadhi Complex, Exhibition Road, P.S.- Gandhi Maidan, Town and District- Patna

.... Opposite Party/s

=====

Appearance :

For the Petitioner/s	:	Mr. Ranjeet Kumar Mr. Dilip Kumar Mr. Kundan Kumar
For the Opposite Party/s	:	Mr. Pramod Kumar Singh Mr. Vinod Kumar Sinha

=====

CORAM: HONOURABLE MR. JUSTICE SANJAY KUMAR

ORAL JUDGMENT

Date: 15-09-2017

This application under Section 482 of the Code of Criminal Procedure has been filed to quash the order dated 09.12.2011 passed by the learned Chief Judicial Magistrate, Patna in Complaint Case No. 1807C of 2011 whereby and whereunder the learned Magistrate finding prima facie case for the offence under Sections 323 and 379 of the Indian Penal Code, summoned the petitioner.

2. Heard both sides.

3. The Opposite Party No. 2 filed a Complaint Case No.



1807 of 2011 on the file of the learned C.J.M, Patna alleging inter alia that on 02.07.2011, this petitioner demanded Rs. 2,00,000/- each month as *rangdari* over his phone and on 04.07.2011, this petitioner along with two others named in the complaint petition and ten unknown entered into his business premises and assaulted by fists and slaps. They snatched wrist watch from his possession and cash amount of Rs. 20,000/- from the possession of his staff. In course of enquiry under Section 202 of the Cr.P.C, the complainant examined witnesses and the learned Magistrate on being satisfied with the materials on record found prima facie case for the offence under Sections 323 and 379 of the Indian Penal Code and summoned the petitioner and other co-accused.

4. The learned counsel for the petitioner submits that the petitioner was the Bureau Chief of Star News at Patna and on 04.07.2011, he got information about fake functioning of the company of the complainant namely PSCL India Ltd. The petitioner being Chief Bureau visited at the office of the complainant to collect information and when he reached on 3rd floor of Shashi Complex the petitioner saw some persons expressing anger against the company of the complainant. At that time, the petitioner's cameraman and one staff, who are accuseds in the complaint case were also present and they also attempted to go inside the premises of the company



whereupon the complainant with the help of his staffs brutally assaulted the petitioner, his cameraman and other staffs. The petitioner managed to come down from the 3rd floor and informed the Officer-in-charge of Gandhi Maidan Police Station regarding the above occurrence. The police party came at the premises of the complainant and on the written report of this petitioner registered Gandhi Maidan P.S. 199 of 2011 for the offence under Sections 147, 149, 341, 323, 307 and 427 of the Indian Penal Code. They arrested the complainant and produced him before the court of C.J.M. from where he was remanded to jail. The complainant in order to wreak vengeance has filed the present complaint case on 06.07.2011 with false and frivolous allegation. The allegation of assault and snatching wrist watch and cash amount is vague and not specific against any of the accused. There are vital contradictions in the statement of the complainant, his witnesses and in the complaint petition. The allegation of demand of *rangdari* has been disbelieved by the court below but without applying judicial mind has taken cognizance against the petitioner for the offence under Sections 323 and 379 of the Indian Penal Code and so, the impugned order is fit to be quashed.

5. The learned counsel for the Opposite Party No. 2 as well as the learned APP for the State opposed the submissions.

6. On perusal of record, I find that a police case vide



Gandhi Maidan P.S. Case No. 199 of 2011 was registered against the complainant on the written report of this petitioner. In the said written report, he has alleged that on the date of occurrence, he has visited at the business premises of the complainant in order to collect news as regards some irregularity being committed by the company of the complainant. After three days of institution of the said F.I.R., the complainant filed the present complaint case. In the said police case, the complainant was remanded to jail. It further appears that there is no specific allegation against this petitioner or any of the accused regarding assault or snatching the wrist watch or cash amount from the complainant and his staff. After filing of the complaint case, the complainant was examined after one month on S.A. where he developed his version by stating the role of this petitioner and other co-accused in detail, which is against the statement given in the complaint petition. There is absolutely no allegation of assault or snatching the wrist watch against this petitioner in the complaint petition. The present case appears to be filed maliciously in order to wreak vengeance.

7. 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."

8. On perusal of complaint petition, impugned order and annexures enclosed with the petition, I find that the petitioner was Bureau Chief of Star News and on the date of occurrence when he alongwith his team visited at the business premises of the Opposite Party No. 2 to collect news about the functioning of his company, the petitioner and his men were assaulted. This petitioner lodged police case immediately and the Opposite Party No. 2 was arrested and remanded to custody. After three days of the occurrence, the Opposite Party No. 2 filed complaint case. The allegation of assault and snatching money is general and omnibus. There are vital contradiction in the complaint petition and statement of complainant on solemn affirmation. The materials on record suggest that the Opposite Party No. 2 has filed the case maliciously with ulterior



motive for wreaking vengeance on the petitioner with a view to spite him due to lodging F.I.R. against Opposite Party No. 2. The case of the petitioner is squarely covered the guidelines given by the Supreme Court at Clauses 5 and 7 of paragraph 102 of Bhajan Lal case (supra) the criminal prosecution of the petitioner appears to be an abuse of process of Court.

9. Having regard to the facts and the guidelines of the Apex Court as stated above, the order dated 09.12.2011 passed by the learned Chief Judicial Magistrate, Patna in Complaint Case No. 1807C of 2011 and the criminal prosecution of this petitioner is quashed and this criminal miscellaneous application is allowed.

(Sanjay Kumar, J)

ajay gupta/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	19.09.2017
Transmission Date	19.09.2017

