

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.43748 of 2013

Arising Out of PS.Case No. -29 Year- 2013 Thana -BHAGWANPUR District- VAISHALI(HAJIPUR)

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Vinay Kumar Singh S/O Awadh Kishore Singh R/O Village - Bamthu,
P.S. - Bhagwanpur, District - Vaishali

.... Petitioner

Versus

1. The State Of Bihar
2. Samvatiya Devi W/O Vijay Paswan R/O Village - Mohammadpur
Hari, P.S. - Bhagwanpur, District - Vaishali

.... Opposite Party

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Appearance :

For the Petitioner : Mr. Manindra Kishore Singh, Advocate

For the Opposite Parties : Mr. Sadanand Paswan, Special P.P.

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD

ORAL JUDGMENT

Date: 13-09-2017

Heard learned counsel for the petitioner and
learned Special Public Prosecutor for the State. Even though the
complainant/Opposite Party No. 2 has entered appearance
through an advocate but no one appears on behalf of the
complainant/Opposite Party No. 2.

2. This application has been filed for quashing of the
order dated 07.08.2013 passed by learned Chief Judicial
Magistrate, Vaishali in connection with Bhagwanpur P.S. Case
No. 29/2013 (Trial No. 6897/2013) by which learned Magistrate
has taken cognizance for the offence punishable under Section
429 and 504 of the Indian Penal Code read with Section 3(1)(x)



of the SC/ST (Prevention of Atrocities) Act, 1989.

3. Learned counsel for the petitioner submits that the prosecution of the petitioner in the present case is totally *mala fide* prosecution which he has specifically pleaded in paragraph 12 of the petition and the same has not been controverted or denied in any manner by the complainant/Opposite Party No. 2. In support of his statements, he has enclosed the materials such as copy of the certified copy of the Bhagwanpur P.S. Case No. 277/2012 under Section 420/120(B) and Section 34 of the Indian Penal Code.

4. Before going into the materials which the petitioner has brought on record and have remained un-controverted, the submission of learned counsel for the petitioner is that the First Information Report (in short the "F.I.R.") has been lodged by one Sarbatiya Devi on 14.02.2013, alleging that while she had taken her she-goat for grazing in an open field on 20.01.2013, three accused persons including this petitioner came there and abused her because her she-goat was grazing in the field which this petitioner claimed belonging to him. It is alleged in the F.I.R. that this petitioner gave a blow on the she-goat by a brick which resulted in the death of the she-goat. According to the



informant, when she told the petitioner that this will be brought to the notice of the Mukhiya and Sarpanch, he promised her to pay the price of the she-goat, but according to the allegation, the petitioner did not pay the price, which he promised to her, rather on demand he starts abusing her as a result thereof the F.I.R. was lodged.

5. Learned counsel for the petitioner submits that at the very first place lodging of the F.I.R. on 14.02.2013 setting up a date of 20.01.2013, i.e., 25 days prior to the date of lodgment of the F.I.R. would prove that in order to avoid showing the dead she-goat allegedly killed by this petitioner, a date, much prior to the date of lodgment of the F.I.R., has been set up.

6. Learned counsel submits that one thing is very clear from the F.I.R. that the informant nowhere says about presence of any person at the alleged place of occurrence. There is no allegation that the alleged occurrence took place in presence of some people. Further, according to learned counsel, the place in question is not a public place which is also evident from the F.I.R. itself and there is no allegation that the alleged statement which may attract Section 3(1)(x) of SC/ST (Prevention of Atrocities) Act was made by accused against the complainant in



public view. He draws attention of this court towards the statements made in paragraph 12, according to which one Sant Lal Yadav, a Director of Patna Sahib Charitable Educational Trust, Patna Sahib, Patna, under which the husband of complainant/Opposite Party No. 2 is working on daily wages is behind this case. The said Sant Lal Yadav is running an Engineering College nearby the village of the petitioner and has grabbed the land of the villagers through fake registry of lands, in which the petitioner was also a victim and being an Advocate in Civil Court, Muzaffarpur, he took it seriously and his father lodged case against said Sant Lal Yadav and others being Bhagwanpur P.S. Case no. 277/2012 under Section 420, 120B/34 of the Indian Penal Code on 29.12.2012, the present case is, therefore lodged taking complainant/Opposite Party No. 2 in fold because her husband is a daily wager under employment of Sant Lal Yadav, the case has been lodged to pressurize the petitioner to get the case withdrawn.

7. Thus, the submission of learned counsel for the petitioner is that this case is fully covered under one of the illustrations given by the Hon'ble Supreme Court in the case of **State of Haryana Vs. Bhajan Lal** since reported in **1992 (1)**



Supp. SCC 335. He has further relied upon the judgment of the Hon'ble Supreme Court in the case of **Prashant Bharti vs. NCT of Delhi** since reported in **AIR (2013) SC 2753**; where the Hon'ble Supreme Court has held that un-controverted materials placed by the petitioners may be considered in appropriate cases.

8. Learned counsel also submits that in course of investigation police has examined only three witnesses and all of them are daily wager, who are either working in the College in question which belonged to Sant Lal Yadav, or, are working under the Contractor who is having an interest working with the said College. Since, in the F.I.R., the informant has not given the name of any of these witnesses, they have been set up by said Sant Lal Yadav just to harass this petitioner. He further submits that the whole story of killing a she-goat and abusing the complainant is out and out a false story. The complainant being a poor illiterate lady has only been set up by the person behind the scene.

9. On the other hand, learned Special Public Prosecutor for the State has vehemently opposed the prayer of the petitioner and submits that there are enough materials in this



case on the basis of which the learned Magistrate has taken cognizance and therefore this court should not interfere with the order taking cognizance.

10. This Court has considered the materials available on record and has also considered the rival submissions. In the present case, the learned Judicial Magistrate has taken cognizance of the offences under Section 429, 504 of the Indian Penal Code and Section 3(1)(x) of the SC/ST (Prevention of Atrocities) Act, 1989, against the petitioner. Those provisions are quoted hereunder for a ready reference:-

“429. Mischief by killing or maiming cattle, etc., of any value or any animal of the value of fifty rupees. –
Whoever commits mischief by killing, poisoning, maiming or rendering useless, any elephant, camel, horse, mule, buffalo, bull, cow or ox, whatever may be the value thereof, or any other animal of the value of fifty rupees or upwards, shall be punished with imprisonment of either description of a term which may extend to five years, or with fine, or with both.

504. Intentional insult with intent to provoke breach of the peace. –
Whoever intentionally insults, and thereby gives provocation to any person, intending or knowing it to be likely that such provocation will cause him to break the public peace, or to commit any other offence, shall be punished with imprisonment of either description for a term which may extend to two years,



or with fine, or with both.

“3.(1)(x). Intentionally insults or intimidates with intent to humiliate a member of a Scheduled Caste or a Scheduled Tribe in any place within public view.”

11. It appears to this Court that the un-controverted statement of the petitioner has got much force. A perusal of the case diary has shown that the witness Ram Pravesh Paswan, Shambhu Das and Gita Devi whose statements have been recorded by the police have admitted working in one way or the other with the Engineering College. No independent witness has been examined by the investigating officer and the investigation has been closed by filing a charge-sheet only on the basis of the three witnesses who are all daily wagers attached with the Engineering College and the contractor. Police investigation is totally silent on what happened to the dead she-goat. No responsible and independent person of the locality has been examined.

12. Annexure-2 is the copy of the certified copy of the F.I.R. lodged by the father of this petitioner against said Sant Lal Yadav and others. This Court has been informed that the accused persons in the said case have been charge-sheeted by the police.



13. The submission of learned counsel for the petitioner that a date being 25 days prior to the lodgment of the present F.I.R. have been set up only because the persons behind the present case were fully aware of the fact that if they will disclose the current or immediately preceding date of occurrence when the F.I.R. is going to be lodged, the dead body of the she-goat will be required to be produced, therefore, in order to avoid that difficulty, date was set up as 20.01.2013. There is no denial of the fact that the husband of the complainant/Opposite Party No. 2 is working as daily wage employee with the said Sant Lal Yadav. The complainant/Opposite Party No. 2 though appeared in this case but has not filed any reply in opposition to the statement of the petitioner particularly in paragraph 12 of the petition and has not even chosen to oppose the present application.

14. In a case of *mala fide* prosecution where there are materials available on the record to demonstrate the same which has resulted in abuse of the process of court, this Court can definitely exercise it's power under Section 482 Cr.P.C. to quash such *mala fide* prosecution. This Court is inclined to accept the submission of learned counsel for the petitioner that



the date of occurrence was purposefully set up as 20.01.2013 to avoid production of the dead body of the she-goat. There is no allegation of criminal intimidation on the alleged date of occurrence. The provision of Section 3(1)(x) of the SC/ST Act has a requirement, according to which the humiliation to a member of the Scheduled Caste or Scheduled Tribe must be in place within a public view. In the present case, the informant herself says that the occurrence took place in a field and there is no whisper in the F.I.R. that it was in a public view. The police investigation seems to be totally perfunctory kind of investigation. Only three daily wagers who are under employment of Engineering College said to be owned by Sant Lal Yadav or under the contractor are said to have supported the case of the complainant. No responsible person who may have independently stated the true fact have been examined by police. The F.I.R. is totally silent on presence of any person much less those three daily wagers at the alleged place of occurrence. The complainant/Opposite Party No. 2 has not controverted the statements showing *mala fide* as disclosed in paragraph '12' of the petition.

15. Taking into consideration the totality of the



circumstances and considering the allegations made in the F.I.R. and the un-controverted materials placed before this Court, this Court is of the view that the cognizance of the offences under Sections 429 and 504 I.P.C. and Section 3(1)(x) of the SC/ST (Prevention of Atrocities) Act has been taken by learned Magistrate in a very routine and mechanical manner. This Court is of the considered opinion that it is a *mala fide* prosecution and is fit to be quashed taking a view based on the judgment of the Hon'ble Supreme Court referred hereinabove.

16. The prosecution is liable to be quashed because the continuation of such kind of prosecution to settle personal score by taking help of member of SC/ST community is only an abuse of the process of the Court. Such complaints are liable to be deprecated and are fit to be quashed in the interest of justice.

17. Therefore, the order taking cognizance is quashed and this application is, accordingly, allowed.

(Rajeev Ranjan Prasad, J.)

Rajeev/-

AFR/NAFR	AFR
CAV DATE	NA
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