

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.16043 of 2014

Arising Out of PS. Case No.-1099 Year-2006 Thana- PATNA COMPLAINT CASE District-
Patna

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Bashist Narayan Tiwary Son Of Bhrigunath Tiwary, Resident Of New
Mainpura, P.S.-Danapur, District-Patna.

... .. Petitioner/s

Versus

1. The State Of Bihar
2. Ram Pravesh Deo Son Of Gireshwar Prasad Resident Of Mohalla-Pitamber
Nagar, Bihta, P.S.-Bihta, District-Patna.

... .. Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Manoranjan Kumar

For the Opposite Party/s : Mr. G.S.Gupta(App)

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CORAM: HONOURABLE MR. JUSTICE ARVIND SRIVASTAVA
ORAL JUDGMENT

Date : 11-04-2018

Heard learned counsels for the parties.

Petitioner, by means of this application under section 482 of the Code of Criminal Procedure, has invoked the inherent jurisdiction of this Court with prayer to quash the order dated 26.03.2007, passed by the learned Judicial Magistrate, 1st Class, Danapur, Patna in connection with Complaint Case No. 1099 C of 2006, whereby and whereunder cognizance has been taken against the petitioner for the offence under sections 406 and 420 of the Indian Penal Code.

The prosecution case, in short, is that the complainant was a tenant in the house of the petitioner. Petitioner asked the complainant to vacate the house and if he



wants to continue in his house then he should increase the rent or deposit Rs. 50,000/- as advance. The complainant gave two cheques of Rs. 30,000/- and Rs. 20,000/- to the petitioner. On vacating the house, the complainant asked the petitioner to return his amount of Rs. 50,000/- then the petitioner gave him two cheques which on presenting in the Bank got dishonoured. It is further alleged that while the complainant was returning home on 20.12.2006 at 4 pm this petitioner alongwith others assaulted him and snatched his wrist watch, chain and Rs. 5,000/-.

Learned counsel appearing for the petitioner submits that the petitioner and the complainant were old friends as they were under training at Bihar Regiment Center in 1975 and after retirement in 2003 the complainant with his family was residing in the house of the petitioner. As a matter of fact, the complainant had to deposit security money for getting allotment of Reliance Petrol Pump and on the request and promise of complainant and others to return within 6 months, petitioner gave Rs. 2,60,000/- to the complainant and his family on 11.08.2004 in present of witnesses. When the petrol pump started, the complainant left the house of the petitioner and on demand gave two cheques of Rs. 30,000/- and Rs. 20,000/-



which bounced due to insufficient fund vide Annexure-2. It is further submitted that mentioning all the above facts, petitioner lodged Danapur P.S. Case No. 466 of 2006 (Annexure-3) on 09.08.2006 against the complainant, in which after trial the complainant was sentenced to undergo rigorous imprisonment of three years and fine of Rs. 5,000/- as per the judgment contained in Annexure-4 to this application. After four months of the first information report lodged by the petitioner, the present case has been filed by the opposite party no. 2 on 21.12.2006 with false and frivolous allegations. Learned counsel, therefore, prays for quashing of the order taking cognizance.

Despite service of notice, opposite party no. 2 has chosen not to appear in the case.

Considering the materials available on record and the facts and circumstances of the case, this Court finds substance in the submissions advanced on behalf of the petitioner and agrees with the same. The present case has been filed after four months of the first information report lodged by the petitioner which in terms of the judgment rendered by the Hon'ble Supreme Court in the case of *State of Haryana Vs. Bhajan Lal*, reported in *1992 Supp (1) SCC 335* is a malicious



prosecution. Relevant extract of paragraph 102 of the aforesaid judgment is quoted hereinbelow for ready reference :

“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) – (6)

(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.”

In view of the discussions made above, the order taking cognizance dated 26.03.2007, passed by the learned Judicial Magistrate, 1st Class, Danapur, Patna in connection with Complaint Case No. 1099 C of 2006, whereby and whereunder



cognizance has been taken against the petitioner for the offence under sections 406 and 420 of the Indian Penal Code, is not sustainable in the eye of law. It is, therefore, quashed.

The application, accordingly, stands allowed.

(Arvind Srivastava, J)

mcv/-

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