

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.11060 of 2012

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1. Harishankar Prasad Gupta @ Harishankar Pd. S/O Late Kishun Prasad @ Kishu Gupta R/O Vill-Pakri (DASRATHA), Near Indian Oil Sipara, P.S.Beur, Distt-Patna
 2. Mohan Gupta @MOHAN Prasad S/O Hari Shankar Prasad Gupta R/O Vill-Pakri (DASRATHA), Near Indian Oil Sipara, P.S.Beur, Distt-Patna
 3. Sohan Gupta @ Sohan Prasad S/O Hari Shankar Prasad Gupta R/O Vill-Pakri (DASRATHA), Near Indian Oil Sipara, P.S.Beur, Distt-Patna

... .. Petitioner/s

Versus

1. The State Of Bihar
2. Pawan Kumar Gupta S/O Prabhu Niranjana Kumar Gupta R/O Vill-Parshuram Chak(Kurthaul), P.S.Parsa Bazar, Distt-Patna

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Rajeev Ranjan Sinha
For the Opposite Party/s : Mr. Mangal Pandit(App)

CORAM: HONOURABLE MR. JUSTICE ARVIND SRIVASTAVA
C.A.V. JUDGMENT

Date : 11-04-2018

Heard learned counsels for the parties.

Petitioners, by means of this application under section 482 of the Code of Criminal Procedure, have invoked the inherent jurisdiction of this Court with prayer to quash the order dated 13.02.2012, passed by the learned Judicial Magistrate, 1st Class, Patna in connection with Complaint Case



No. 2312 C of 2009 under section 323, 341, 379 of the Indian Penal Code, whereby and whereunder the discharge petition under section 245 Cr.P.C. dated 29.08.2011 filed by the petitioner has been rejected.

The prosecution case, in short, is that on 28.08.2009 about about 2 PM the complainant alongwith his father and brother was going to purchase articles by a Tempo. When they reached Sipara Gumti, 5-6 unknown persons stopped the Tempo and one of them struck on the temple of the complainant by the butt of the pistol and asked him to deliver his belongings and as such the complainant handed over Rs. 25,000/- and his father handed over Rs. 2,000/- and his brother gave Rs. 500/- in fear and all of them stated that they know them and threatened not to lodge any case.

Learned counsel appearing for the petitioners submits that petitioners are quite innocent and have committed no offence as alleged, rather they have been falsely implicated in the present case only with a view to save their skin from Parsa Bazar P.S. Case No. 152 of 2009 (Annexure-2) dated 29.08.2009 under section 498A/34 of the Indian Penal Code lodged by the daughter of the petitioner no.1. The daughter of the petitioner no. 1, who is wife of the brother of the



complainant, had earlier filed Complaint Case No. 2628 C of 2006 (Annexure-3) in connection with assault and torture made by her in-laws due to non-fulfillment of demand of dowry. That case was later on compromised between the parties and on basis of the compromise the complainant as well his father were acquitted. Thereafter, they were residing peacefully, but after some time she was again brutally assaulted by her husband and other in-laws, then she filed the aforesaid police case vide Annexure-2. It is further submitted that the husband of the daughter of petitioner no. 1 thereafter filed Complaint Case No. 2326 C of 2009 against these petitioners vide Annexure-4. Learned counsel, therefore, prays for quashing of the order taking cognizance.

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 filing of the police case by the daughter of the petitioner no. 1 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 dated dated 13.02.2012, passed by the learned Judicial Magistrate, 1st Class, Patna in connection with Complaint Case No. 2312 C of 2009 under section 323, 341, 379 of the Indian Penal Code, whereby and whereunder the discharge petition



under section 245 Cr.P.C. dated 29.08.2011 filed by the petitioner has been rejected, is not sustainable in the eye of law. Accordingly, the order dated 13.02.2012 and the entire criminal proceeding is, hereby, quashed.

The application, thus, stands allowed.

(Arvind Srivastava, J)

mcv/-

AFR/NAFR	NAFR
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