

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.14981 of 2012

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1. PRAKASH KUMAR SHRIVASTAVA S/O LATE RAM NAGINA PRASAD R/O MOHALLA - AKHARA GHAT NAZIRPUR, P.S. AHIYAPUR, DISTRICT - MUZAFFARPUR
 2. UDAY KUMAR SHRIVASTAVA S/O LATE RAM NAGINA PRASAD R/O MOHALLA - AKHARA GHAT NAZIRPUR, P.S. AHIYAPUR, DISTRICT - MUZAFFARPUR

... .. Petitioner/s

Versus

1. THE STATE OF BIHAR
2. SANJAY KUMAR VERMA S/O LATE JANARDAN PRASAD R/O VILLAGE - BARIYARPUR, P.S. SAKRA, DISTRICT - MUZAFFARPUR

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Soni Shrivastava
For the Opposite Party/s : Mr. Ganesh Pd.Singh(App)

CORAM: HONOURABLE MR. JUSTICE ARVIND SRIVASTAVA

ORAL 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 03.02.2009, passed by the learned Chief Judicial Magistrate, Muzaffarpur in connection with Complaint Case No. 2111 of 2008, whereby and whereunder cognizance has been taken against the petitioner for the offence under section 406 of the Indian Penal Code.



The prosecution case, in short, is that in connection with sell and purchase of land complainant had paid Rs. 85,000/- and Rs. 1,10,000/- to the accused persons. However, they only executed sale deed for Rs. 75,000/-. When complainant came to know that the accused persons have executed sale deed in favour of some other person, he asked them to return the rest money, on which they ousted him and did not return his money.

Learned counsel appearing for the petitioner submits that no offence against the petitioner is disclosed and the present prosecution has been initiated with mala fide intention for the purposes of harassment. Learned counsel submits that it has been alleged that complainant paid Rs. 85,000/- but land was executed for Rs. 75,000/- only, however there is nothing in the sale deed in this respect. Further, so far as the allegation of giving Rs. 1,10,000/- to the petitioners, the complainant has failed to produce any chit of paper. By way of supplementary affidavit, learned counsel has brought on record the order-sheet of the present complaint case pending before the Court below. It is submitted that from the order-sheets, it appears that despite being given several opportunities, the complainant failed to produce any evidence in support of the



allegations. It is further submitted that petitioners had 20 decimals of land. Out of which they executed 4.5 decimals of land to Md. Sagir Ansari and Md. Shahabuddin vide Annexure-3. Thereafter they sold further 4.5 decimal of land to complainant vide Annexure-4 and thereafter sold the remaining 11 decimals of land to Md. Sagir and Md. Shahabuddin vide Annexure-5. Real fact is that the complainant having failed to purchase the 11 decimals of land due to paucity of fund, hatched a plan to implicate the petitioner in the present false and fabricated case out of personal grudge. 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. In the present case, when the complainant failed to purchase the land in question, then has brought the present prosecution in order to wreck personal vengeance 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 03.02.2009, passed by the learned Chief Judicial Magistrate, Muzaffarpur in connection with Complaint Case No. 2111 of 2008, whereby and whereunder



cognizance has been taken against the petitioner for the offence under section 406 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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