

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.11093 of 2016

Arising Out of PS.Case No. -164 Year- 2015 Thana -PATNA COMPLAINT CASE District-
PATNA

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1. Bablu Kumar @ Bablu Kumar Singh S/o Khattu Singh
2. Raghuvir Paswan S/o Sakaldeep Paswan Both are the resident of R/o Vill- Jat
Dumri, Near P.O Dumri P.S.- Poonpun, District- Patna.

.... Petitioner/s

Versus

1. The State of Bihar through the Senior Superintendant of Police, Patna.
2. Ramsaran Paswan S/o Late Rambhajan Paswan R/o Vill- Jat Dumri, P.O Dumri,
P.S.- Poonpun, District- Patna.

.... Opposite Party/s

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Appearance :
For the Petitioner/s : Mr. Dharmesh Kumar Srivastava
For the Opposite Party/s : Mr. Ram Chandra Sahni, APP

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CORAM: HONOURABLE THE CHIEF JUSTICE

ORAL JUDGMENT

Date: 11-04-2018

Seeking quashing of Complaint Case No. 164 (C) of
2015 pending before the 1st Class Judicial Magistrate, Patna and
challenging the cognizance taken under Sections 147, 148, 323, 390,
379, 504 and 506 of the Indian Penal Code read with Section 27 of
the Arms Act vide order dated 24.09.2015 this application has been
filed under Section 482 of the Code of Criminal Procedure, 1973.

The applicant has filed the complaint and it is the
grievance of the applicant that land measuring 84 decimal situated in
village Dumri, in the District of Patna was gifted to one Ram
Khelawan Paswan by the original land owner one Shri Umar Karim.
after death of Ram Khelawan Paswan, his daughter Ramkali Devi



succeeded to land in question. The complainant claims to be the only son of Ramkali Devi and successor to the property. It is stated that with the passage of time, the land changed its complexion and became a pond with water being continuously present throughout the year. It is said that the complainant had started growing fish by implanting fish-seeds in the pond and was selling the fish so cultivated. It is alleged that the applicants herein who were the accused took out the fish from the pond and sold them for more than Rs.80,000/-. It is said that because of this there were disputes between the parties and when the petitioners prevented the respondent he was assaulted and suffered injuries and a sum of Rs.5000/- was taken away from him. On this assertion, complaint has been filed against more than 8 persons who are family members of the applicant-accused persons.

As far as the present applicant-accused persons are concerned, applicant no.1 Bablu Kumar @ Bablu Kumar Singh is 84 years old, a senior citizen, and applicant no.2 Raghuvir Paswan is a physically handicapped, dumb and mute person. It is their case that they have been falsely implicated and they have nothing to do in the matter. Placing reliance on the judgment of the Supreme Court in the case of State of *Haryana vs. Bhajanlal* [1992 Supp. (1) SCC 335] it is submitted that the applicants are falsely implicated. A bare



reading of the complaint would show that no offence is made out against them. This application has therefore been filed for quashing the complaint.

On a perusal of the complaint in question it is seen that from paragraphs 1 to 4 narration of facts with regard to how the land came in possession of the present owner and how it was converted into a pond is narrated. Thereafter in paragraph-5, a general allegation is made that all the accused persons came to the pond for taking out the fish collectively, they used unparliamentary words and abused the appellant and assaulted him and took away five thousand rupees from him. General and omnibus allegations are made without giving any specific detail with regard to the date, time and place where the alleged incident as narrated in paragraph-5 took place. There is no specific act committed by the present applicants, how they are responsible for commission of the offence and various ingredients necessary to show acts of omission and commission on their part which constitutes an offence are all lacking from the averments made in the complaint. Similarly, in paragraph-6 it is stated that when the complainant's wife objected to the activities the accused persons committed assault with lathi and *danda* and threatened the complainant's wife and his family. Again, in this paragraph like in the previous paragraph-5, nothing is indicated, no



details of acts of commission and omission with reference to the 8 accused persons are indicated. Only vague and unspecified allegations are made. Thereafter, in paragraph-7 it is stated that when the applicant went to the Poonpun Police Station to lodge the complaint the police authorities threatened him and drove him away. This in sum and substance is the allegation in the complaint and if we analyze the same in the backdrop of the law laid down in the case of *Bhajanlal* (supra), it is clear that the ingredients necessary for proceeding against the applicants after registration of the complaint are not made out. In the case of *Bhajanlal* (supra) after evaluating various aspects of the matter the legal principles with regard to exercise of inherent jurisdiction by this Court under Section 482, Cr.PC have been crystallized in paragraph-102 in the following manner:-

“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 decision 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 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 malafide 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.”

Thereafter in paragraph-103 the observations made by the Supreme Court reads as under:-

“103. We also give a note of caution to the effect that the power of quashing a criminal proceeding should be exercised very sparingly and with circumspection and that too in the rarest of rare cases; that the court will not be justified in embarking upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR or the complaint and that the



extraordinary or inherent powers do not confer an arbitrary jurisdiction on the court to act according to its whim or caprice.”

If the complaint in hand and the facts as are narrated hereinabove are analyzed in the backdrop of the aforesaid requirement of law, it is clear that if the allegations made in the complaint are taken at its face value and accepted, it does not constitute any offence or make out a case against the applicants. That apart, the complaint made seems to be absurd and inherently improbable and it manifestly indicates malafide on the part of the complainant seems to have been initiated with ulterior motive only to put pressure on the applicants with regard to the disputes pertaining to the right and entitlement in the pond in question.

Taking note of all the facts and circumstances I am of the considered view that no case is made out for proceeding with the complaint. Accordingly, this application is allowed and the complaint is quashed.

(Rajendra Menon, CJ)

mr1./-

AFR/NAFR	NAFR
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