

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.12774 of 2012

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1. SHYAM SUNDER AGGARWAL S/O LATE KESHMIRI LAL AGRAWAL RESIDENT OF 62, BHERA ENCLAVE, NEAR PEERA GARHI, OUTER RING ROAD, NEW DELHI 110087
 2. RAJIV AGRAWAL S/O SRI SHYAM SUNDER AGRAWAL RESIDENT OF 62, BHERA ENCLAVE, NEAR PEERA GARHI, OUTER RING ROAD, NEW DELHI 110087

... .. Petitioner/s

Versus

1. THE STATE OF BIHAR
2. MOST. JAIKUMARI DEVI W/O LATE RADHESHYAM SAHANI RESIDENT OF PUJAH KOTHIYA, P.S- MEHSI, DISTRICT- EAST CHAMPARAN.

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr. Sandeep Kuamr, Mr. Dhananjay Kumar Upadhyay & Mr. Vivekanand Singh, Advocates
For the Opposite Party/s	:	Mr. Abhishek Kumar & Ms. Rashmi Jha, Advocates
For the State	:	Mr. Murlidhar (App)

CORAM: HONOURABLE MR. JUSTICE ARVIND SRIVASTAVA
C.A.V. 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 10.08.2011, passed by the learned Chief Judicial Magistrate, Motihari in connection with Trial No. 4804 of 2011 arising out of C0-810 of 2006, whereby and whereunder cognizance has been taken against the petitioner for the offence under section 302 of the Indian Penal Code.

The facts of the case, in short, is that the present



first information report was lodged on 09.05.2005 by the informant after a delay of about two months from the date of alleged occurrence on 04.03.2005. The police after investigation submitted final form finding the case false. In the final form it was specified that the place of occurrence is at New Delhi. A compensation claim is also pending at Delhi. After considering the materials available on record the final form was accepted on 11.05.2006 by the learned Chief Judicial Magistrate, Motihari. Thereafter on basis of protest petition filed by the complainant an enquiry under section 202 Cr. P.C. was held treating the protest petition as complaint petition and after enquiry the Court found that no *prima facie* case was made out against the proposed accused persons, and accordingly, the complaint was dismissed under section 203 Cr. P.C. on 06.10.2007. Learned Chief Judicial Magistrate dismissed the complaint petition holding that the death of the deceased was on account of train accident and that the case is out and out false. Thereafter, complainant filed Cr. Revision No. 29 of 2008, which was allowed/remanded by the 6th Additional District Judge, Motihari on a limited issue of territorial jurisdiction vide Annexure-2.

Learned counsel appearing for the petitioner submits that learned Magistrate totally overlooked the direction



of the learned Sessions Judge on the point of territorial jurisdiction. The complainant has concealed the material facts while making the complaint. As a matter of fact, the deceased met a rail accident. Thereafter he was taken to Sanjay Gandhi Hospital, Delhi for treatment from there he was taken to Lok Nayak Jay Prakash Hospital, Delhi where he died in course of the treatment as would be evident from the Medical record of Sanjay Gandhi Hospital and LNJP Hospital, Inquest Repoert and statement of the complainant as contained in Annexure-4 (series). Complainant was paid the salary of the deceased for the months of February and March, 2005. she was also given a sum of Rs. 10,000/- as financial help on humanitarian ground. She gave her receipt of having received the said amount. The complainant herself cremated the deceased and after returning to her village she has filed the present false case. 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. Apparently the present case has been filed by the complainant after delay of about two months. It has come on record that complainant had herself



cremated the deceased who met a rail accident and died during course of treatment. Now, for fetching only unlawful gains she has filed the present case 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 10.08.2011, passed by the learned Chief Judicial Magistrate, Motihari in connection with Trial No. 4804 of 2011 arising out of C0-810 of 2006, whereby and whereunder cognizance has been taken against the petitioner for the offence under section 302 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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