

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.13971 of 2012

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1. Dr. Dilip Kumar S/O Dr. Ramanand Prasad Sinha R/O Vill-Karnauti(Hargovind Pur), P.S.-Mahnar, Distt-Vaishali, At Present Residing At Janta Path, Kankarbagh Road, P.S.-Agamkuan, Distt-Patna
 2. Ankit Kumar S/O Dr. Dilip Kumar R/O Vill-Karnauti(Hargovind Pur), P.S.-Mahnar, Distt-Vaishali, At Present Residing At Janta Path, Kankarbagh Road, P.S.-Agamkuan, Distt-Patna
 3. Kavita Kumari W/O Dr. Dilip Kumar R/O Vill-Karnauti(Hargovind Pur), P.S.-Mahnar, Distt-Vaishali, At Present Residing At Janta Path, Kankarbagh Road, P.S.-Agamkuan, Distt-Patna

... .. Petitioner/s

Versus

1. THE STATE OF BIHAR
2. NAVIN KUMAR S/O RAJENDRA PRASAD SINGH R/O NALANDA CERAMIC, MAIN ROAD, KANKARBAGH, NEAR NALANDA MEDICAL COLLEGE , P.S.-AGAMKUAN, DISTT-PATNA

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Sandeep Kumar
For the Opposite Party/s : Mr. Pranav Kumar (APP)

CORAM: HONOURABLE MR. JUSTICE ARVIND SRIVASTAVA
CAV JUDGMENT

Date : 11-04-2018

Heard learned counsels for the petitioners and learned counsel appearing on behalf of the State. However, no one appears on behalf of the opposite party no. 2 even after issuance of notice.

2. 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 10.02.2011, passed by the learned Additional Chief Judicial Magistrate, Patna City, Patna in connection with Agamkuan P.S.



Case No. 224 of 2010, whereby and whereunder cognizance has been taken against the petitioners for the offence under sections 447, 461, 323, 34 of the Indian Penal Code.

3. The prosecution case, in short, is that as per written report of the informant is that petitioners along with 8-10 unknown accused persons locked the main gate of Nalanda Ceramic and destroyed marble worth Rs. One Lakh in the godown.

4. Learned counsel appearing on behalf of the petitioners submits that no offence against the petitioners is disclosed and the present prosecution has been initiated with *mala fide* intention for the purposes of harassment. Petitioner no. 1 is a Doctor and on the date of occurrence, he was present as a Medical Officer in the Additional Primary Health Centre, Samastipur. In this regard, In-charge, Medical Officer, has already given a certificate as Annexure-2. Petitioner no. 2 is a student of Budha Institute of Dental Sciences and Hospital, Patna (Annexure-3) and petitioner no. 3 is a house wife staying with her husband at his place of posting. In fact, the petitioner no.1 has purchased a land of the informant from one Dayanand Prasad, due to which, there was a dispute with the informant. Further submission is that the proceeding under section 144 Cr.



P.C. and one Misc. Case No. 540 of 1993 have been going on between the parties. The present malicious prosecution has been brought against the petitioners with false and frivolous allegations. Therefore, learned counsel prays for quashing the order taking cognizance.

5. Considering the materials available on record and the facts of the case, this Court finds substance in the submissions advanced on behalf of the petitioners. Moreover, the present case has been filed by the informant only after dispute occurred between the parties with regard to purchase of land, 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 channelized and inflexible guidelines or rigid formula and to give an exhaustive list of myriad kinds of cases wherein such power should be exercise:

(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.”

6. In view of the discussions made above, the order taking cognizance dated 10.02.2011, passed by the learned Additional Chief Judicial Magistrate, Patna City, Patna in



connection with Agamkuan P.S. Case No. 224 of 2010, is not sustainable in the eye of law. Therefore, it is, hereby, quashed.

7. Accordingly, the application stands allowed.

(Arvind Srivastava, J)

Shailendra/-

AFR/NAFR	NAFR
CAV DATE	16.11.2017
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