

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.14448 of 2012

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BRANCH MANAGER, L.I.C. OF INDIA, PATNA BRANCH NO.-2,
JEEVAN GANGA FRASER ROAD , PATNA.

... .. Petitioner/s

Versus

1. THE STATE OF BIHAR
2. SHIV KUMAR SINHA S/O LATE JAGDISH SINGH RESIDENT OF 101,
DEV ARUN APARTMENT, BHIKHNA PAHARI, BANKIPUR, PATNA-
800004

... .. Opposite Party/s

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Appearance :

For the Petitioner/s	:	Mr. Abhimanjy Vatsa & Mr. Rajni Kant Singh, Advocates
For the Opposite Party/s :		Mr. Akbar Ali(APP)

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CORAM: HONOURABLE MR. JUSTICE ARVIND SRIVASTAVA
ORAL 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 02.07.2010, passed by the learned Judicial Magistrate, 1st
Class, Patna in connection with Complaint Case No. 791 of
2010, 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 the
complainant had pledged his two LIC policies against the Car
Laon of Rs. 2,50,000/- taken by one Ashok Kumar. On account
of non-payment of premium for Car Loan by said Ashok Kumar,



the Bank encashed the LIC policies of the complainant.

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 complainant himself assigned his LIC policies (Annexure-3) with the Bank as security to the loan amount and on default of payment of installments, the Bank encashed the aforesaid policies, and as such, no illegally has been committed by the petitioner. Petitioner has carried out only procedural formalities and has not made any breach of trust with the complainant and whatever has been done that has been done on behalf of the Bank. 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 had pledged his LIC policies with the Bank, he must have been aware of its consequences, but even then he has



brought the present prosecution 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 02.07.2010, passed by the learned Judicial Magistrate, 1st Class, Patna in connection with Complaint Case No. 791 of 2010, 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/-

AFR/NAFR	NAFR
CAV DATE	16.11.2017
Uploading Date	12.04.2018
Transmission Date	12.04.2018

