

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.12418 of 2012

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LALAN KUMAR DAS S/O RAJENDRA LAL DAS R/O MOHALLA - KAYASTHA
TOLA, P.S. + DISTT. - SAHARSA AT PRESENT POSTED AS SHO TILAKAMANJHI,
POLICE STATION, DISTRICT - BHAGALPUR

... .. Petitioner/s

Versus

1. THE STATE OF BIHAR
2. DHRUV KUMAR GHOSH S/O SRI SUBODH CHANDRA GHOSH R/O G.C. BANERJEE
ROAD, MOHALLA - BHIKHANPURA, P.S. TILAKAMANJHI, DISTRICT -
BHAGALPUR

... .. Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Santosh Kumar Verma
For the Opposite Party/s : Mr. Ajay Kumar 1 (APP)

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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 11.01.2012, passed by learned Judicial Magistrate, 1st Class, Bhagalpur in Complaint Case No. 2337 of 2010, whereby and whereunder cognizance has been taken against the petitioner and others for the offence under sections 166, 323, 504, 120B and 342 of the Indian Penal Code.

Prosecution case, in short, is that opposite party no. 2 filed complaint case against his wife and others including the present petitioner, who was the officer-in-charge of the local police station, alleging therein that on 16.06.2010 she left her matrimonial house and later on the same day came with



other persons in the night and assaulted the complainant, for which Complaint Case No. 1249 of 2010 was filed. Her wife also filed false case against the complainant. Complainant thereafter filed a petition for dissolution of marriage.

On 09.11.2010, the wife of the complainant came at the door of the complainant and started abusing him, for which information was also given to the police, but no heed was paid by the police. A written complaint was also filed before the Superintendent of Police, but no action was taken.

On the same day, at about 10 PM petitioner and other police officials came to the house of the complainant and forcibly directed to keep his wife and on objection they took him to police station and kept him there illegally. Notice under section 107 Cr. P.C. was served upon him at 2AM.

Learned counsel appearing for the petitioner submits that petitioner being the Officer-in-charge of the local police took steps only to resolve the issue between the parties. He only discharged his official duty and had no personal grudge in the matter. It is further submitted that being a Public Servant is primary duty is to control the law and order situation. Besides the above, it is submitted that the child was handed over to the wife on the direction of the higher official



and in the presence of magistrate deputed in this regard for which petitioner has no role to play. It is accordingly, submitted that the entire prosecution as well as the order taking cognizance against the petitioner is an abuse of the process of the Court and are therefore fit to be quashed.

Learned counsel appearing for the opposite parties opposes the prayer of the petitioner.

Considering the materials available on record and the facts of the case, this Court finds substance in the submissions advanced on behalf of the petitioner. The present prosecution against the petitioner, 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, this Court finds that the order dated 11.01.2012, passed by learned Judicial Magistrate, 1st Class, Bhagalpur in Complaint Case No. 2337 of 2010, whereby and whereunder cognizance has been taken against the petitioner and others for the offence under sections 166, 323, 504, 120B and 342 of the Indian Penal Code, is not sustainable in the eye of law. The same is, hereby, quashed.

The application, accordingly, stands allowed.

(Arvind Srivastava, J)

mcv/-

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