

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.13659 of 2012

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DR. SURESH KUMAR S/O SRI RAMESHWAR SHARMA RESIDENT OF
MOHALLA- RUPAM TIMBER, KANKARBAGH MAIN ROAD PATNA-
800020, POLICE STATION- KANKARBAGH, DISTRICT- PATNA.

... .. Petitioner/s

Versus

1. THE STATE OF BIHAR
2. SRI SURENDRA KUMAR S/O SRI NAND DEO PRASAD RESIDENT OF
MOHALLA- EAST OF TIWARI BECHAR, KANKARBAGH, POLICE
STATION- KANKARBAGH, DISTRICT- PATNA.

... .. Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Kameshwar Prasad Sinha
For the Opposite Party/s : Mr. Maya Nand Jha(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 04.04.2009, passed by the learned Judicial Magistrate, 1st Class, Patna in connection with Complaint Case No. 3435 (C) of 2008, whereby and whereunder cognizance has been taken against the petitioner for the offence under sections 323, 341, 379/34 of the Indian Penal Code.

The prosecution case, in short, is that the on the alleged date of occurrence the accused persons assaulted the complainant as a result of which he fell down on earth and



thereafter the accused persons snatched away the wrist watch 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. Petitioner had earlier filed Kankarbagh P.S. Case No. 384 of 2010 against the complainant and in order to save skin from that case the complainant has brought the present false and malicious prosecution against the petitioner. 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, the complainant has filed the present complaint case after filing of the police case by the present petitioner 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 04.04.2009, passed by the learned Judicial Magistrate, 1st Class, Patna in connection with Complaint Case No. 3435 (C) of 2008, whereby and whereunder cognizance has been taken against the petitioner for the offence under sections 323, 341, 379/34 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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