

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Criminal Miscellaneous No.11442 of 2012**

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SUNIL KUMAR DAS S/O LATE HEMANT DAS RESIDENT OF  
VILLAGE- DASGRAM, P.S.- ABADPUR, DISTRICT- KATIHAR

... .. Petitioner/s

Versus

1. THE STATE OF BIHAR
2. BULARANI DAS S/O LATE FANIBUSHAN DAS R/O VILLAGE-  
DASGRAM, P.S.- ABADPUR, DISTRICT- KATIHAR

... .. Opposite Party/s

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**Appearance :**

|                          |   |                                                                                      |
|--------------------------|---|--------------------------------------------------------------------------------------|
| For the Petitioner/s     | : | Mr. Md. Musowir, Adv                                                                 |
| For the Opposite Party/s | : | Mr. Sunil Prasad Singh<br>Mr. Ratnakar Ambastha &<br>Mr. Rajendra Pd. Sah, Advocates |
| For the State            | : | Mr. Sunil Kr.Pandey, Addl. P.P.                                                      |

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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 29.04.2011, passed by the learned Judicial Magistrate, 1<sup>st</sup> Class, Katihar in connection with Complaint Case No. 3420 of 2009, whereby and whereunder cognizance has been taken against the petitioner for the offence under sections 323 and 379 of the Indian Penal Code.

The prosecution case, in short, is that on the date of occurrence, complainant's Bataidar informed that all the accused persons are cutting paddy crops forcibly about on one



bigha land. When the complainant reached there and protested, all the accused persons abused her and assaulted with fists and slaps and snatched her Gold Bangles worth Rs. 32,000/-, Necklace worth Rs. 16000/- and ladies purse.

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 prior to this case mother of the complainant namely, Kamla Das filed a Title (Partition) Suit No. 108 of 2004 (Annexure-2) before the Sub Judge, 1<sup>st</sup>, Katihar against the petitioner and others. After death of her mother, the complainant and her sister filed a substitution petition as legal heirs which is pending for disposal. In that case, after notices petitioner and others have appeared and filed written statement dated 24.07.2009 (Annexure-3). Learned counsel submits that only thereafter the present malicious prosecution has been brought against the petitioner with false and frivolous allegations. Learned counsel, therefore, prays for quashing of the order taking cognizance.

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. Moreover, the present complaint has been filed by the complainant only after being substituted in the partition suit pending between the parties, 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 29.04.2011, passed by the learned Judicial Magistrate, 1<sup>st</sup> Class, Katihar in connection with Complaint Case No. 3420 of 2009, whereby and whereunder cognizance has been taken against the petitioner for the offence under sections 323 and 379 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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