

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.16172 of 2014

Arising Out of PS. Case No.-2738 Year-2009 Thana- PATNA COMPLAINT CASE District-
Patna

=====

Arun Kumar @ Arun Kr. Tiwari S/O Subedar Tiwari, R/O Village Garakhari,
P.S. Bikram, District- Patna, At Present C/O Dr. Ravi Bhushan Sharma,
Clinic, Road No. 2 Rajendra Nagar, P.S. Kadamkuan, District- Patna

... .. Petitioner/s

Versus

1. The State Of Bihar
2. Upendra Singh S/O Sri Dhirendra Singh, R/O Mohalla- Saristabad, P.S.-
Gardanibagh, District- Patna

... .. Opposite Party/s

=====

Appearance :

For the Petitioner/s : Mr. Mukesh Kant
For the Opposite Party/s : Mr. Binod Kumar No.2 (App)

=====

CORAM: HONOURABLE MR. JUSTICE ARVIND SRIVASTAVA
C.A.V. JUDGMENT

Date : 04-04-2018

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 Complaint Case No. 2738 (C) of 2009 including the order dated 19.05.2010, passed by the learned Judicial Magistrate, 1st Class, Patna passed in the aforesaid Complaint Case, whereby and whereunder cognizance has been taken against the petitioner for the offence under sections 406 and 418 of the Indian Penal Code.

The prosecution case, in short, is that on 30.06.2008 accused/petitioner came to the house of the complainant and



asked for Rs. 25,000/- for treatment of his father, on which complainant issued two cheques of Rs. 25,000/- on 02.07.2008 and 09.07.2008. It is alleged that after expiry of the agreed period, complainant approached the petitioner, but he clearly denied to return the money. Hence, the present prosecution was initiated.

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 further submits that the real reason for institution of the present case is the earlier case filed by this petitioner being Complaint Case No. 204 of 2007 (Annexure-2) against the present complainant and others who are land brokers and had convinced this petitioner to purchase a litigated land. It is further submitted that the amount in question i.e. Rs. 50,000/-, was given to the petitioner by the complainant as brokerage. Learned counsel brought on record the sale deed in connection with which petitioner was paid brokerage of Rs. 50000/- as Annexure-3 to the present application. Learned counsel, therefore, prays for quashing of the entire prosecution including 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 after filing of the complaint case by the 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. Paragraph 102 of the aforesaid judgment reads as under :

“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) Where the allegations made in the First Information Report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the First Information Report and other materials, if any, accompanying the F.I.R. do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code;

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent



person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(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.”

On conjoint reading of the facts of the present case and the law laid down by the Hon'ble Apex Court, this Court finds that the present case is squarely covered by point no. 7 of paragraph 102 of the aforesaid judgment.

In view of the discussions made above, the order taking cognizance dated 19.05.2010 passed by the learned Judicial Magistrate, 1st Class, Patna in Complaint Case No. 2738 (C) of 2009 as also the entire prosecution 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	03.11.2017
Uploading Date	04.04.2018
Transmission Date	04.04.2018

