

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No. 4406 of 2015

Arising Out of P.S. Case No.-121 Year-2014 Thana- DIGHA District- Patna

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1. Rita Devi, Wife of Ishwar Singh.
 2. Mritunjaya Kumar @ Mritunjaya Singh, Son of Ishwar Singh.
 3. Manish Kumar, Son of Ishwar Singh.
 4. Ishwar Singh, Son of Late Basudev Narayan.
 5. Deepak Kumar Singh @ Deepak Singh, Son of Mithilesh Kumar Singh.
All are Resident of Patipul, P.S-Digha, District-Patna.

... .. Petitioner/s

Versus

1. The State of Bihar
2. Rakesh Kumar, Son of Sri Hari Narayan Singh, Resident of Village-Haripur Colony, P.S-Digha, District-Patna.

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr. Avinash and Mr. Krityanand Jha, Advocate
For the Opposite Party/s :	:	None
For the State	:	Mr. Jharkhandi Upadhyay, APP

**CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN
AMANULLAH**

ORAL JUDGMENT

Date : 19-06-2019

Heard learned counsel for the petitioners and learned
APP for the State.

2. Despite valid service of notice on opposite party no. 2
and name of learned counsel also appearing in the cause list,
nobody appeared when the matter was taken up and heard.

3. The petitioners have moved the Court under Section
482 of the Code of Criminal Procedure, 1973 (hereinafter referred
to as the 'Code') for the following relief:



“ That this is an application for quashing the order dated 1.9.2014 passed by Smt. Akanksha Kashyap Judicial Magistrate 1st Class Patna in Digha P.S. Case No. 121/2014 dated 2.6.214 Tr. No. 3087/2014, whereby and where under Smt. Akanksha Kashyap Judicial Magistrate 1st Class Patna has taken cognizance under sections 406, 420, 427, 379, 504 of the Indian Penal Code against the petitioners.”

4. The allegation against the petitioners is of destroying the hut of the opposite party no.2-informant and also taking away materials relating to construction.

5. Learned counsel for the petitioners submitted that even in the FIR it is admitted that the land in question belonged to the petitioners and the allegation is that the same has been sold to the opposite party no. 2 for Rs. 2,75,000/- and also possession given. Learned counsel submitted that if in the year 2013 itself, as alleged the entire amount was taken and possession given, there was no occasion for the opposite party no. 2 to have waited till 2014 i.e., for 11 years for getting the land registered in his favour. It was further submitted that the allegation that the petitioners destroyed the hut and took away the articles is falsified as no recovery of any article has been made from the petitioners. Learned counsel submitted that the present case is a counter blast to the earlier case filed by the petitioner no. 5, being Digha PS Case No. 16 of 2012 dated 04.02.2012 under Sections 341/ 323/



385/ 379/ 504/34 of the Indian Penal Code against the opposite party no. 2 and three others alleging that they had demanded extortion with regard to the land in question. Learned counsel submitted that the present case has been filed much after on 03.06.2014.

6. Learned APP submitted that though the police have submitted charge sheet and cognizance has been taken but from the factual background, it appears that the present case is to counter the earlier case filed against the opposite party no. 2 by the petitioner no. 5.

7. Having considered the facts and circumstances of the case and submissions of learned counsel for the parties, the Court finds that a case for interference has been made out.

8. The Hon'ble Supreme Court in **State of Haryana vs. Bhajan Lal** reported as **1992 Supp (1) SCC 335**, at paragraph no. 102 has enumerated categories where the Court is required to exercise its inherent power under Section 482 of the Code. The same reads as under:

“102. 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 FIR 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.”

9. In the opinion of the Court, the present case is covered under category 7 of the aforesaid judgment in **Bhajan Lal** (*supra*) at paragraph no. 102.

10. Further, the Hon’ble Supreme Court in **State of Karnataka v. L. Muniswamy** reported as (1977) 2 SCC 699, at paragraph no. 7, has observed thus:

“7.In the exercise of this wholesome power, the High Court is entitled to quash a proceeding if it comes to the conclusion that allowing the proceeding to continue would be an abuse of the process of the Court or that the ends of justice require that the proceeding ought to be quashed. The saving of the High Court's inherent powers, both in civil and criminal matters, is designed to achieve a salutary public purpose which is that a Court proceeding ought not to be permitted to degenerate into a weapon of harassment or persecution. In a criminal case, the veiled object behind a lame prosecution, the very nature of the material on which the structure of the prosecution rests and the like would justify the High Court in quashing the proceeding in the interest of justice.....”

11. Moreover, from the materials on record and the submissions made by learned counsel for the petitioners, which has gone un rebutted and uncontroverted, it appears that the



present case has clearly been filed to get over the adverse effects of the earlier case filed against the opposite party no. 2 and three others by petitioner no. 5. Thus, the Court finds that the present criminal case is *mala fide* and for the purpose of harassing the petitioners and clearly an abuse of the process of the Court.

12. For reasons aforesaid, the application is allowed. The entire criminal prosecution arising out of Digha PS Case No. 121 of 2014 (Tr. No. 3087 of 2014), including the order dated 01.09.2014 by which cognizance has been taken, stands quashed.

(Ahsanuddin Amanullah, J.)

P. Kumar

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