

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No. 5311 of 2015

Arising Out of P.S. Case No.-37 Year-2013 Thana- SC/ST District- Bhagalpur

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1. Ranjeet Mandal, Son of Sakhichand Mandal, Resident of Mohalla - Sakarulachak, Police Station - Mojahidpur, District- Bhagalpur.
 2. Ravi Sah Son of Kuldeep Sah, Resident of Mohalla - Mirjanhat, Police Station - Mojahidpur, District - Bhagalpur.

... .. Petitioner/s

Versus

1. The State of Bihar
2. Sarmilla Devi, Wife of Gopal Das, Resident of Mohalla - Mohaddi Nagar (Harijan Tola), Police Station - Mojahidpur, District - Bhagalpur.

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Dr. Manoj Kumar and Ms. Sweety Sinha, Advocates
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, 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
order of cognizance dated 31.1.2014 passed by the
learned Chief Judicial Magistrate, Bhagalpur in
connection with SC/ST Bhagalpur P.S. Case No.*



37/2013 by which the learned Chief Judicial Magistrate took cognizance Under Section 323, 504, 448, 354/34 of Indian Penal Code and 3 (1) (x) (xi) of SC/ST Act.”

4. The allegation against the petitioners is of assault and using abusive caste name against the opposite party no. 2-informant. The reason for the incident is mentioned that the petitioners were forcibly trying to buy land from the husband of the informant, which was refused.

5. Learned counsel for the petitioners submitted that the case is totally false and frivolous and has been filed for oblique reasons. It was submitted that the date of FIR is 12.08.2013, which would be relevant inasmuch as in the year 2003, there was an agreement between the husband of the opposite party no. 2 and petitioner no. 1 for sale of a piece of land for a total consideration amount of Rs. 2,51,000/- out of which Rs. 51,000/- was paid upfront and the rest was to be paid later on at the time of registration. In this connection, learned counsel drew the attention of the Court to Annexure-2, which is copy of the said agreement between the parties. It was submitted that the land in question was already the subject matter of a title suit which fact was suppressed by the husband of the opposite party no. 2 and later on, the husband of the opposite party no. 2 also lost the suit in the year 2004. It was submitted that when the land in question clearly did



not belong to the husband of the opposite party no. 2, the petitioners went for return of Rs. 51,000/- given in advance and the same was refused, thus, to exert pressure on the petitioners not to ask for refund of Rs. 51,000/- taken by the husband of the opposite party no. 2, this false case has been instituted. Learned counsel submitted that even the fact of there being a past agreement between the parties and Rs. 51,000/- having been taken by the husband of the opposite party no. 2, having been suppressed in the FIR clearly indicates that the criminal prosecution is false and frivolous. Learned counsel submitted that even otherwise when the land in question was clearly held by a competent Civil Court in a title suit not to belong to the husband of the opposite party no. 2, in the year 2004 itself, there could not have been any occasion in the year 2013 for the petitioners to exert any pressure for sale of such land.

6. Learned APP fairly submitted that from the factual background of the case, it appears that the allegations made against the petitioners are not correct.

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 allegation relating to abuse by caste name clearly appears to be cosmetic for the reason that the genesis of the incident is also narrated in the FIR itself which according to the opposite party no. 2 was pressure being created by the petitioners for sale of a certain piece of land which clearly had been held not to belong to him. Thus, when the cause of action for such abuse, as has been narrated by the informant herself in the FIR, stands falsified and negated, there cannot be any question of there being any reaction based on such false claim. Thus, when the land itself did not belong to the husband of the opposite party no. 2, which has been held far back in the year 2004 itself, the reason for the incident being pressure to sell the land is totally unacceptable and patently false.

9. 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 ought 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.”

10. 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.

11. 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.....”

12. In the aforesaid background, the Court finds that the present case is *mala fide* and has been filed for the purpose of



wreaking vengeance and to harass the petitioners and for oblique reason. Thus, clearly it is an abuse of the process of the Court.

13. Accordingly, the application is allowed. The entire criminal proceeding relating to and arising out of Bhagalpur SC/ST PS Case No. 37 of 2013, including the order dated 31.01.2014, by which cognizance has been taken, stands quashed.

(Ahsanuddin Amanullah, J.)

P. Kumar

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