

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No. 48764 of 2014

Arising Out of Complaint Case No.-913 (C) Year-2013 Thana- PATNA COMPLAINT CASE
District- Patna

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1. Nagendra Prasad Singh, Son of Late Jhulan Singh @ Late Bhulan Singh.
 2. Smt. Manorama Singh, Wife of Nagendra Prasad Singh.

Both resident of Mangal Apartment, Flat No. 201, Bharatpur (Yarpur), P.S. -
Gardanibagh, District - Patna.

... .. Petitioner/s

Versus

1. The State of Bihar
2. Shankar Prasad, Son of Sri Banwari Singh, Resident of Mathiyapur, P.O. -
Jamshot, P.S. - Sahpur, District - Patna.

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr. Kamlesh Kumar, Ms. Prabha Kumari and Ms. Kahkashan Alam, Advocates
For the Opposite Party/s	:	Mr. Akhauri Kamal Kishore Sahay, Advocate
For the State	:	Mr. Md. Iftikhar Mahmood, Advocate

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

ORAL JUDGMENT

Date : 17-05-2019

Heard learned counsel for the petitioners; learned APP
for the State and learned counsel for the opposite party no. 2.

2. The petitioners have moved the Court under Section
482 of the Code of Criminal Procedure, 1973 for the following
relief:



“That, for quashing of the complaint vide Complaint Case No. 903(C)/2013 which is pending in the court of Sri P.K. Chauhan, Judicial Magistrate 1st Class, Danapur and further for quashing of the entire criminal proceeding including the cognizance order dated 23.08.2014, which has been taken by Sri P.K. Chauhan, Judicial Magistrate 1st Class, Danapur for the offences under sections 323,341,379,427,504/34 of the Indian Penal Code against the accused persons including the petitioner.”

3. Supplementary affidavit has been filed on behalf of the petitioners in which the sale deed in favour of petitioner no. 2 of the land in question along with the mutation order as also the receipt showing payment of Government rent till 2015-16 has been brought on record.

4. The opposite party no. 2 had filed Complaint Case No. 913(C) of 2013, against the petitioners and one other named person and 5-6 unnamed, alleging that when he had gone to visit his plot at Mauza Jamshot, PS-Danapur bearing *Thana* No. 30, *Khata* No. 475, *Khesra* No. 2203, he saw the crops standing uprooted and when he started making enquiry in this regard, the accused, including the petitioners came and started abusing and upon protest, the petitioner no. 2 is said to have snatched gold chain from the neck of the opposite party no. 2 worth Rs. 42,000/- and the petitioner no. 1 is alleged to have taken Rs. 5,500/- cash from the pocket of the opposite party no. 2.



5. Learned counsel for the petitioners submitted that the entire story is false and frivolous. It was submitted that the land in question never belonged to the opposite party no. 2, which would be clear from the fact that for such land, there is a registered sale deed in favour of the opposite party no. 2 dated 14.02.1992. It was submitted that pursuant thereto, the land was also mutated in the name of petitioner no. 2 in the year 1997 and since then, she is paying the government rent for the said land. In support thereof, learned counsel referred to the Annexures of the supplementary affidavit filed today, which are copies of the sale deed, mutation order and the rent receipt. Learned counsel submitted that in such view of the matter, when the land belonged to the opposite party no. 2, there was no occasion for them to come and abuse and assault the opposite party no. 2 and further, the allegation of snatching of gold chain from the neck of the complainant by the opposite party no. 2, who is a lady is also unbelievable, highly improbable and in fact absurd. Learned counsel submitted that the present case is a counter blast to Complaint Case No. 975(C) of 2012 filed by the petitioner no. 1 before the Court below at Danapur alleging bouncing of cheque of Rs. 5,94,387/- which was given by the opposite party no. 2 in favour of petitioner no. 1. It was submitted that the said complaint was filed on 31.08.2012,



whereas the present complaint has been filed on 31.07.2013. Learned counsel submitted that in the said case, cognizance was taken against the opposite party no. 2 on 26.02.2013 and thereafter he has surrendered and was granted bail on 15.04.2013. It was submitted that after that, the opposite party no. 2 has filed another Complaint Case No. 576(C) of 2013 in which, to get over the allegation of cheque issued by him in favour of petitioner no. 1 having bounced, he has alleged that the cheque in question was stolen. However, learned counsel submitted that the said complaint was dismissed on 16.01.2014.

6. Learned APP submitted that the Court below has taken cognizance on the basis of materials before it.

7. Learned counsel for the opposite party no. 2 submitted that there is no proof with regard to petitioner no. 1 having given any money to the opposite party no. 2 and, thus, the case filed by him is false. However, on a query of the Court that, in view of materials brought on record by the petitioner in the present proceeding, the land in question can be claimed by the opposite party no. 2 to be his and further that once the land belonged to the petitioner no. 2, how could there have been any dispute relating to the said land and also that in view of the sequence of events and nature of allegations, the same not only



being improbable but also bordering on the absurdity; learned counsel was not in a position to meet the query of the Court.

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 would 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. The present case, in the opinion of the Court, is covered under categories 5 and 7 of the aforesaid decision 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 as under:

“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. In the aforesaid background, the Court finds that a case for interference has been made out.

12, As has rightly been submitted by learned counsel for the petitioners, from the sequence of events and the materials in support of the petitioners, specifically with regard to the land in question being in the name of the petitioner no. 2, the allegations that crops on such land being destroyed and which is said to be the root cause and genesis of the assault and snatching of gold chain and Rs. 5,500/- cash, falls flat and is clearly unbelievable and completely false as also highly improbable and absurd.

13. The Court, thus, finds that the present prosecution is malicious, filed with *mala fide* intention for the purpose of wreaking vengeance against the petitioners and to harass them.

14. Accordingly, the application stands allowed. The entire criminal proceeding relating to Complaint Case No. 913(C) of 2013, including the order dated 23.08.2014, pending before the



Court below at Danapur, as far as it relates to the petitioners,
stands quashed.

(Ahsanuddin Amanullah, J.)

P. Kumar

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