

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.7192 of 2015**

Arising Out of P.S. Case No.-508 Year-2013 Thana- BIHARSHARIF District- Nalanda

Saket Kumar Son of Late Bishram Narayan Singh, R/o village Muraura, P.S.
Bihar Sharif, District- Nalanda.

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr.
For the State : Mr. Shantanu Kumar, APP

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

Date : 15-04-2019

Nobody appears on behalf of the petitioner. Learned
APP for the State has been heard.

2. The petitioner has 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 dt. 28.2.14 taking cognizance for offence
under Section 406/420/506/34 of the Indian Penal
Code in connection with Bihar P.S. Case No. 508 of
2013 against the petitioner by Chief Judicial
Magistrate, Nalanda.”*



3. The allegation against the petitioner and another person is that despite having taken Rs. 13,10,000/- from the informant for sale of land, they did not transfer the land in his favour. It has further been alleged that out of a total amount agreed between the parties, only Rs. 4,66,000/- remained which the informant was ready to give but the accused, including the petitioner were just delaying the matter and finally when the informant asked him to take the remaining amount and execute the sale deed, he was told that neither the sale deed would be executed nor the money would be returned and further that the petitioner threatened that he would implicate and destroy the informant.

4. The Court has gone through the materials on record with the assistance of the learned APP.

5. It appears that the matter is purely of civil nature and even if the allegations are accepted at their face value to be true, the only remedy available to the informant was either to file suit for specific performance or in the alternative, a money suit for recovery of the money alleged to have been taken by the accused, including the petitioner. However, based on the averments made in the FIR, in the considered opinion of the Court, no criminal proceeding can lie.



6. Learned APP also submitted that the entire reading of the FIR discloses only civil dispute.

7. In **State of Haryana vs. Bhajan Lal** reported as **1992 Supp (1) SCC 335**, at paragraph no. 102 the Hon'ble Supreme Court has enumerated categories where the Court should 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.”

8. In the opinion of the Court, the present case is covered under categories 1 and 7 of the aforesaid judgment in **Bhajan Lal** (supra) at paragraph no. 102.

9. Further, the Hon'ble Supreme Court in **Indian Oil Corpn. v. NEPC India Ltd.** reported as **(2006) 6 SCC 736**, at paragraph no. 13, has held thus:



“13. Any effort to settle civil disputes and claims, which do not involve any criminal offence, by applying pressure through criminal prosecution should be deprecated and discouraged.....”

10. Similarly, 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. Thus, taking an overall view and on the basis of materials on record, especially the FIR itself, the Court finds that prosecution is *mala fide*, untenable and solely intended to harass the petitioner. It is clear that for oblique reason and to exert pressure on the petitioner, for a totally civil cause, the present criminal case has been instituted, which is clearly an abuse of the process of the Court.



12. For reasons aforesaid, the application is allowed.

The entire criminal proceeding arising out of Bihar P.S. Case No. 508 of 2013, including the order dated 28.02.2014, by which cognizance has been taken by the Court below at Nalanda, as far as it relates to the petitioner, stands quashed.

(Ahsanuddin Amanullah, J.)

P. Kumar

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