

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No. 34415 of 2016

Arising Out of P.S. Case No.-433 Year-2012 Thana- SONEPUR District- Saran

Rita Kumari @ Rita Devi W/o Dharmendra Prasad Yadav, D/o Mutukdhari Rai, R/o Village Basantpur, P.O. + P.S.- Dighwara and the District- Saran.

... .. Petitioner/s

Versus

1. The State of Bihar.
2. Shyam Prakash Singh, S/o Late Shiv Nandan Singh, R/o Village-Paharichak, P.O. + P.S.- Sonepur and the District- Saran.

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr. Shiv Shankar Prasad Yadav and Mr. Arbind Kumar Sinha, Advocates
For the Opposite Party/s	:	Mr. Kamlesh Kumar Pathak, Advocate
For the State	:	Mr. Jharkhandi Upadhyay, APP

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

ORAL JUDGMENT

Date : 08-05-2019

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

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

*“1) That through the present application, the petitioner is seeking the **QASHING** of the order dated 06.05.2013 passed in the Tr. No. 4169/14 arisen out of the Sonepur P.S. Case No. 433/2012 instituted dated 10.04.2012 and register in which the cognizance has been taken under the sections 457 and 380 of the I.P.C. against the petitioner whereby and whereunder the petitioner is aggrieved, and has preferred the present application to quash the instant order passed by the learned Chief Judicial*



Magistrate Saran at Chhapra, Saran vide the order impugned as an annexure to the petitioner.”

3. The allegation against the petitioner in Sonapur PS Case No. 433 of 2012 filed on 10.04.2012, by the opposite party no. 2, is of forcibly entering into the house of the opposite party no. 2 and taking away two fiber chairs worth Rs. 800/- and Iron rod worth Rs. 2000/-.

4. Learned counsel for the petitioner submitted that the petitioner's husband, is a man of easy virtues and was selling away his portion of the joint family property without taking care of either the petitioner no. 1 or his three children and, thus, to prevent such action of her husband, the petitioner no. 1 has filed Title Partition Suit No. 629 of 2011, which is pending before the Sub-Judge, Saran, Chapra against the mother of opposite party no. 2 and others. It was submitted that the petitioner's husband has sold some land in favour of the mother of the opposite party no. 2. Learned counsel submitted that the opposite party no. 2, in order to exert undue pressure on the petitioner has filed this patently false case. It was further submitted that the allegations made are totally unbelievable as it cannot be believed that a woman would forcibly enter the house and take away two fibre chairs worth Rs. 8,00/- and iron rods worth Rs. 2,000/-. It was submitted that it cannot be believed that the petitioner being a lady would forcibly



take away two chairs and iron rods worth Rs. 2,000/- from the house of the person who is her next door neighbour and against whom she is fighting litigation and who is also a practicing Advocate in the Court of Railway Judicial Magistrate, Sonapur. Moreover, it was submitted that in the background of there being a land dispute between the parties, the present case is clearly an abuse of the process of the Court.

5. It was further submitted that the trouble for the petitioner started by filing of Title Partition Suit No. 629 of 2011 by which the opposite party no. 2, by exerting undue influence on the husband of the petitioner no. 1 had got ancestral land of the opposite party no. 2 transferred in favour of his mother which was totally illegal as the minor children of the petitioner no. 1 also had the right and title in such ancestral property as there had not been partition between the co-parceners. Learned counsel submitted that the opposite party no. 2 has also filed Complaint Case No. 01 of 2012 on 05.01.2012, against the petitioner, her father and brother, in which the allegation is that they had snatched wrist watch worth Rs. 3,000/- and Rs. 20,000/- cash, at gun point from the opposite party no. 2. It was submitted that the opposite party no. 2 is misusing his position as an advocate practicing in the Court of the Railway Judicial Magistrate, Sonapur and repeatedly



filing cases, all after filing of Title Partition Suit No. 629 of 2011 on 22.11.2011 by the petitioner. Learned counsel submitted that in the background of such dispute where the opposite party no. 2 is repeatedly filing criminal cases and that too of frivolous nature with the allegation that any prudent man would not believe and the same being highly improbable in the peculiar facts and circumstances of the case. It was further submitted that even the allegation in Complaint Case No. 01 of 2012 of snatching wrist watch worth Rs. 3,000/- and Rs. 20,000/- cash at gun point, is both unbelievable and also absurd.

6. Learned APP submitted that though cognizance has been taken against the petitioner, which is under challenge in the present application, on the basis of materials before the Court, but taking an overall view of the matter in the background of the facts, the case itself appears to be motivated with the purpose of exerting undue pressure on the petitioner in the Title Partition Suit filed by her and in which the mother of the opposite party no. 2, in favour of whom the husband of the petitioner no. 1 had transferred some ancestral property, is a defendant.

7. Learned counsel for the opposite party no. 2 submitted that the petitioner has not shown to the Court that from the FIR, no criminal offence is made out. It was further submitted



that the petitioner should rather cooperate in the trial and get the same concluded.

8. 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.

9. As has rightly been submitted by learned counsel for the petitioner, the picture which emerges leave no doubt in the mind of the Court that the opposite party no. 2 is trying to wreak vengeance against the petitioner. It is not denied that the petitioner has filed Title Partition Suit No. 629 of 2011, prior to initiation of all criminal proceedings against the petitioner by the opposite party no. 2. It is also not denied that in the said Title Partition Suit, the mother of the opposite party no. 2, in whose favour the husband of the petitioner has transferred some ancestral land has been made a defendant. Thus, in such view of the matter, there is a clear connection between filing of the Title Partition Suit by the petitioner no. 1 and the filing of various cases by the opposite party no. 2, against the petitioner and her family members.

10. Moreover, as has been pointed out by learned counsel for the petitioner, the allegation appears to be improbable and in fact, unbelievable inasmuch as, at the cost of repetition, it cannot be believed that the petitioner being a lady, with some



persons would forcibly enter the house of opposite party no. 2 and would take away two fibre chairs worth Rs. 8,00/- and iron rods worth Rs. 2,000/- knowing fully well the position of the opposite party no. 2 and also that she would be identified, as it has not been alleged that the petitioner had done anything to hide her identity. Thus, such an allegation against a known person, that too, a next door neighbour and further with whom there is already prior civil litigation relating to land, in the opinion of the Court is not fit to be believed. Another reason why the Court is of the opinion that the allegations made are not fit to be relied upon is the reason that the opposite party no. 2, who is a practicing Advocate in the local Railway Judicial Magistrate, Sonapur, his position itself is a deterrent for any person to commit such offence. Further, the petitioner being a next door neighbour, would obviously be aware that there would be recovery of the articles from her home, and thus could not have taken such a step knowing fully well that she would be caught.

11. 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 various 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.”

12. 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.

13. 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.....”

14. In view of the aforesaid, the Court finds that the present case is *mala fide*, filed for the purpose of wreaking vengeance and intended to harass the petitioner and, thus, an abuse of the process of the Court.

15. Accordingly, the application is allowed. The entire criminal proceeding arising out of Sonapur PS Case No. 433 of 2012 pending before the Court below at Sonapur/Saran including the order dated 06.05.2013, by which cognizance has been taken, as far as it relates to the petitioner, stands quashed.

(Ahsanuddin Amanullah, J.)

P. Kumar

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