

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No. 47274 of 2014

Arising Out of Complaint Case No.-779 Year-2013 Thana- BHABHUA (KAIMUR)
COMPLAINT District- Bhabhua (Kaimur)

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Rajni Kant Ojha, Son of Late Lakshaman Ojha, Resident of Village Chhotka Singharpura, P.S. Simri, District- Buxar, at Present Welfare Officer, Madhuban, District - East Champaran, Motihari.

... .. Petitioner/s

Versus

1. The State of Bihar
2. Satendra Ram, Son of Sri Sajjan Ram, Resident of Village - Betri, P.S. - Bhabhua, District - Kaimur.

... .. Opposite Party/s

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Appearance :

For the Petitioner/s	:	Mr. Om Prakash Upadhyay, Advocate
For the State	:	Mr. Abhay Kumar-1, A.P.P.

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CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN
AMANULLAH

ORAL JUDGMENT

Date : 22-02-2019

Heard learned counsel for the petitioner and learned A.P.P. for the State.

2. Despite valid service of notice on opposite party no. 2, nobody appeared on his behalf when the matter was taken up and heard.

3. 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 taking cognizance dt. 24.06.2014 U/S 323, 504 I.P.C. and 3 (1) (x) of SC/ST Atrocities Act in Complaint Case No. 779/2013 by the court of CJM, Bhabhua (Kaimur) whereby and where under



learned C.J.M., had illegally and arbitrarily taken cognizance in said complaint Case, which is inherently improbable, palpably false, absurd, concocted and creation out of vested interest of the complainant as well as the others on whose behest the instant complaint was lodged. And/or such other order/orders as your Lordships may deem fit and proper in the facts and circumstances of the case.”

4. The allegation against the petitioner is that the opposite party no. 2 used to supply milk to him and when he went to ask for his payment, he was abused and pushed resulting in milk being wasted. It was further alleged that when the opposite party no. 2 came to the house of the petitioner, along with the *Mukhiya* and two others, again he was abused using caste slang.

5. Learned counsel for the petitioner submitted that he was at the relevant point of time the Block Development Officer of Bhabhua in the district of Kaimur and the opposite party no. 2 was his milkman. It was submitted that the present case is a proxy by the *Mukhiya* concerned for the reason that the petitioner on complaint received had got enquiry conducted and had lodged an F.I.R. against the *Mukhiya* being Bhabhua P.S. Case No. 113 of 2013 dated 04.07.2013. It was submitted that he had also made a complaint against the *Mukhiya* through the Sub Divisional Officer, Bhabhua for appropriate action on 04.07.2013. Learned counsel submitted that to counter the charge and to put pressure on the



petitioner not to press the allegation against the *Mukhiya*, the present case has been managed and filed on 05.07.2013. It was further submitted that even from a legal point of view, the cognizance taken for offence under Section 3(1)(x) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (hereinafter referred to as the 'Act'), as it then was, is untenable as it requires the abuse to have been made in public view. It was submitted that in the present case, as per the complaint itself, the abuse was inside the house of the petitioner and, thus, cannot be said to be in public view. Further, learned counsel submitted that the allegation of pushing is too tenuous to maintain the charge under Sections 322 and 504 of the Indian Penal Code.

6. Learned A.P.P. could not dispute the fact that the allegations, even if accepted, admittedly did not take place in public view. He also could not show as to how for such a tenuous allegation of being pushed and 5 Kg of milk spilt, would justify the petitioner facing trial under Sections 322 and 504 of the Indian Penal Code.

7. For reasons aforesaid, the Court finds that a case for interference has been made out. As has rightly been submitted by learned counsel for the petitioner, the present case appears to be



directly the fallout of the action taken by the petitioner against the local *Mukhiya*. The same is apparent from the fact that the *Mukhiya* is a witness in the complaint who is said to have accompanied the opposite party no. 2, to the house of the petitioner when he again went there to ask for money. Further, the Court finds that the allegation, even if accepted at face value, do not disclose any offence under Section 3(1)(x) of the Act as it did not take place in public view, which is the basic requirement for a charge under the said section. Further, the Court finds that the allegation of pushing resulting in destruction of 5 Kg of milk and tearing of *kurta* is cosmetic, only to add to the charges against the petitioner. Further, in the background of the circumstance where the *Mukhiya* would come to the house of the petitioner for settling a petty money dispute of the opposite party no. 2, does not appear natural and in fact appears to be for oblique reasons, as he already nurtured a grudge against the petitioner for having written to the superior authorities for the action and for lodging F.I.R. against him. In this context, the Court deems it relevant to refer to the judgment of the Hon'ble Supreme Court in **State of Karnataka v. L. Muniswamy reported as (1977) 2 SCC 699**, where at paragraph no. 7, the following has been observed:

“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.....”

8. Further, the Hon'ble Supreme Court in **State of Haryana vs. Bhajan Lal** reported as **1992 Supp (1) SCC 335**, has defined categories where the Court would exercise its inherent jurisdiction 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, falls under category-7 of the aforesaid judgment in **Bhajan Lal** (supra) at paragraph no. 102.

10. For reasons aforesaid, the application is allowed. The entire Complaint Case No. 779 of 2013, including the order dated 24.06.2014, by which cognizance has been taken, stands quashed.

(Ahsanuddin Amanullah, J.)

P. Kumar

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