

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No. 51697 of 2014**

Arising Out of P.S. Case No.-32 Year-2012 Thana- JHANJHARPUR District- Madhubani

1. Jibachh Yadav @ Jeevach Yadav.
2. Shiv Lal Yadav Both sons of Late Sukhdeo Yadav.
3. Bina Devi wife of Shiv Lal Yadav
4. Fulo Devi wife of Jibachch Yadav.

All resident of Village- Chanauraganj Tola Kanakpura, P.S. Jhanjharpur,
District- Madhubani.

... .. Petitioner/s

Versus

1. The State of Bihar
2. Gauri Devi wife of Late Jitendra Yadav, Resident of Village- Chanauraganj
Tola Kanakpura, P.S. Jhanjharpur, District- Madhubani.

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr. Uday Bhanu Roy and Mr. Baleshwar Kamat, Advocates
For the Opposite Party No. 2	:	Mr. Arvind Kumar, Advocate
For the State	:	Mr. Parmanand Kumar, APP

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

ORAL JUDGMENT

Date : 19-06-2019

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

2. By order dated 03.04.2019, the Court had directed
learned APP to obtain the complete legible photocopy of the police
papers, including the case diary and the inquest report and



postmortem reports from the Superintendent of Police, Madhubani. The same are available with the learned APP.

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 Criminal Miscellaneous is being preferred for quashing the impugned orders dated 24.03.2014 and 27.10.2014 passed by learned Additional Chief Judicial Magistrate, Jhanjharpur and the Sessions Judge, Madhubani respectively whereby and whereunder the learned court became pleased to take cognizance under Section 302/34 of the Indian Penal Code against the petitioners and Criminal Revisional application was dismissed passed in Criminal Revision No. 1722/2014 (C.F) are arising out of Jhanjharpur P.S. Case No. 32/2012 for the offences Under Section 302/34 of the Indian Penal Code.”

4. The allegation against the petitioners is that they had brutally assaulted the husband of the informant-opposite party no. 2 with wooden seat (*peedha*) and bricks.

5. Learned counsel for the petitioners submitted that the allegation is that 15 days prior to the death of the husband, he was assaulted and beaten up and thereafter he had come to his home after getting medical treatment and again he was assaulted in the same manner and when the informant took her husband to the doctor after sometime, he succumbed. Learned counsel submitted that as per the F.I.R. itself, it is obvious that the case has been filed



due to land dispute where it has been alleged that the petitioners were cutting the soil from the land of the informant and taking it to their own land. Learned counsel submitted that the entire story is absolutely false as no such incident took place which is corroborated both by the inquest as well as postmortem report. It was submitted that in neither of the report, there is any injury shown, either internal or external and in fact, the report discloses that he died of heart failure. Learned counsel submitted that in the FIR itself, the reason has been given that there was past land dispute and also there was dispute relating to fight between the children. It was, thus, submitted that though the husband of the opposite party no. 2 had died a natural death, to falsely implicate the petitioners and to exert pressure on them relating to the land dispute, the false case has been filed.

6. Learned APP from the inquest report and postmortem report submitted that in the inquest, the police has opined that due to assault, during course of treatment, the husband of the opposite party no. 2 had died. However, on a query of the Court as to whether in the postmortem there is any mark of any injury, he fairly submitted that the postmortem report clearly states that there is no injury, either external or internal.



7. Today, when the Court called upon the learned counsel for the opposite party no. 2 to assist, he only reiterated the allegations made in the FIR. On a query of the Court as to whether such allegation was even remotely corroborated by the postmortem report, learned counsel for the opposite party no. 2, who had in his possession such report could not point out any such finding to indicate that the allegations made against the petitioners was reflected in such postmortem report.

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. When there is a specific and categorical allegation in the FIR that there was brutal assault on the person of the husband of the opposite party no. 2 leading to his death and in the postmortem report, no external injury of any assault having been found, clearly falsifies the entire allegation. Moreover, in view of the reason given in the FIR itself that there was land dispute and fight among the children of the parties and learned counsel for the opposite party no. 2 not being able to point out any circumstance or evidence to indicate that the death of the husband of the opposite party no. 2 was connected with the alleged assault by the petitioners, based on such allegation criminal prosecution is not fit



to proceed. The Court would only observe that the inquest report is based on mere surmises and conjectures and not on actual physical verification of the body of the deceased and, thus, cannot be relied upon moreso, when the postmortem report which is by a qualified doctor and which can be relied upon in law, being a scientific document, clearly indicates that there was no injury, either external or internal.

10. 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 interfere under 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.”



11. 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.

12. 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.....”

13. For reasons aforesaid, the Court finds that the present prosecution against the petitioners is *mala fide* with the purpose to harass them and thus, an abuse of the process of the Court.

14. Accordingly, the application is allowed. The entire criminal proceeding arising out of Jhanjharpur PS Case No. 32 of 2012, pending before the Court below at Jhanjharpur in the district



of Madhubani including the order taking cognizance dated 24.03.2014 as well as the order dated 27.10.2014 passed in Criminal Revision No. 1722 of 2014 (C.F.), stand quashed.

(Ahsanuddin Amanullah, J.)

P. Kumar

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