

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.43421 of 2014

Arising Out of PS. Case No.-232 Year-2014 Thana- ROHTAS COMPLAINT CASE District-
Rohtas

-
1. Ezaj Ahmad Son of Late Maneruddin Ahmad Resident of Village Company Sarai, Hospital Gate, P.S.-Sasaram (Town), District-Rohtas.
 2. Khawaja Sawar Nizami @ Dr. K.S. Nizami, Son of Late Khawaja Hasan Nizami, Resident of Mohalla-Sonar Toli, Sasaram, P.S.-Sasaram (Town), District-Rohtas at present resident of 91B Block, Lane No.-7 Chatkidih, Jamshedpur (Jharkhand).

... .. Petitioner/s

Versus

1. The State Of Bihar.
2. Nand Kumar Singh Son of Late Vishwanath Singh Resident of Mohalla-New Area, Sasaram, P.S.-Sasaram Mufassil, District-Rohtas.

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr. Vikramdeo Singh, Advocate
For the State	:	Mrs. Sarda Kumari, APP
For the Opposite Party/s	:	Mr. Jitendra Pd. Singh, Advocate

CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN
AMANULLAH

ORAL JUDGMENT

Date : 29-01-2019

Heard learned counsel for the petitioners and learned
A.P.P. for the State and learned counsel for the opposite party no.2,
who has suo motu appeared.

2. 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 is an application for quashing
the order dated 17.6.2014 passed by the
learned Chief Judicial Magistrate, Rohtas
at Sasaram in Complaint Case 232/2014 by
which the learned Court below was pleased*



to take cognizance of the offence against both the petitioners under Sections 323, 504 and 379 of the Indian Penal Code.”

3. The allegation against the petitioners is that they had gone to the house of the opposite party no.2 at 4 P.M. and had started abusing and assaulting him and that the petitioner no.2 took Rs.5000/- from his pocket and also gold chain worth Rs.25,000/- from his neck and they further threatened the opposite party no.2 to pay Rs.1 lakh as extortion. It has further been stated that petitioner no.2 has land dispute with his brother who is known to opposite party no.2.

4. Learned counsel for the petitioners submitted that a purely fictitious case has been lodged against the petitioners with *mala fide* intention. It was submitted that the petitioner no.2 and his brother are at inimical terms and for an incident which took place in August-September, 2013, the petitioner no. 2 had filed Complaint Case no.1139 of 2013 in which the opposite party no.2 was also accused, along with four others and, thus, as a counter blast, the present complaint case was filed on 02.11.2013 and the present complaint is a counter blast which has been filed on 12.03.2014. It was submitted that the opposite party no.2 has got land from the brother of the petitioner no.2 who is also accused in



Complaint Case no.1139 of 2013 filed by the petitioner no.2 alleging that the land which was sold to opposite party no.2 was in the share of the petitioners and to coerce them and force them not to pursue the matter, the present complaint case has been filed. It was submitted that in view of the wrongful transfer of the land of the petitioners to the opposite party no.2, by the brother of the petitioner no.2, Title Suit No.512 of 2014 is also pending in the Court of Sub Judge 1st Sasaram which has been filed by petitioner no.2 and in which opposite party no.2 is also a defendant. Learned counsel submitted that on the plain reading of the complaint, it is apparent that all allegations are frivolous and cosmetic only to make out a grave case, but the same stand demolished in view of the fact that at the 4.00 P.M., in a busy locality, there being no explanation as what resistance the opposite party no.2 offered or why the neighbours did not come and prevent the incident being mentioned in the complaint, clearly the occurrence itself is fictitious and fabricated. It was further submitted that in the background of past enmity, especially when the petitioner no.1 is a practicing Advocate in the local Civil Court and the petitioner no.2 is a practicing MBBS Doctor in Jamshedpur, the allegation of extortion is absolutely unbelievable.



5. Learned A.P.P. fairly submitted that in the background of the dispute, the present complaint case appears to be a counter blast.

6. Learned counsel for the opposite party no.2 submitted that the court below has *prima facie* found a case and thus, the same does not need any interference. However, on a direct query of the Court that the matter was being heard by the Court while considering its inherent power under Section 482 of the Code for preventing the abuse of the process of the court and otherwise as to secure the end of justice and in that background whether the allegation inspired any confidence, he was not in a position to counter the fact that the same appeared to be improbable.

7. 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. From the plain reading of the complaint itself, the nature of allegation and the manner of occurrence discloses that the same is both impractical and improbable. As has rightly been submitted by learned counsel for the petitioners, that in a busy locality at 4.00 P.M. without there being any explanation as to what resistance the opposite party no.2 offered and also no explanation as to why the neighbours and other persons of the locality did not come forward



to help and further the demand of extortion, appears to be totally unbelievable. Moreover, in the background of the dispute and the opposite party no.2 being the beneficiary of the land transferred by the brother of petitioner no.2, which is alleged to be beyond his share and for which litigations are pending, which have been filed by the petitioner no. 2, the obvious motive of false implication and misuse of the process of the court is writ large in the proceeding.

8. In this connection, the Court would refer to the judgment of the Hon'ble Supreme Court in the case of **State of Haryana Vs. Bhajan Lal**, reported as **AIR 1992 SC 604** wherein at paragraph no.102, categories have been enumerated 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.

9. The present case, in the opinion of the Court, is covered under categories 5 and 7 of the aforesaid judgment at paragraph no.102 in the case of **Bhajan Lal** (Supra).

10. From the above, it is clear that the prosecution is *mala fide*, untenable and solely intended to harass the petitioner.

11. Accordingly, for reasons aforesaid, the application is allowed. The entire criminal proceeding arising out of Complaint Case No.232 of 2014 as well as the order taking cognizance dated 17.06.2014 stands quashed.

(Ahsanuddin Amanullah, J)

Sanjeev/- Ranjeet

AFR/NAFR	NAFR
U	
T	

