

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.47227 of 2014

Arising Out of PS. Case No.-370 Year-2012 Thana- LAHERIYASARAI District- Darbhanga

1. Md. Shahabuddin Quraishi @ Md. Shahabuddin Son of Late Imamuddin Quraishi @ Munmun Kasai.
2. Md. Zeyauddin @ Md. Zeyad Quraishi Son of Late Imamuddin Quraishi @ Munmun Kasai.
3. Tajuddin Quraishi Son of Late Imamuddin Quraishi @ Munmun Kasai.
All resident of Mohalla - Raham Khan, P.S. - Lahariasarai, Distt. - Darbhanga.

... .. Petitioner/s

Versus

1. The State Of Bihar.
2. Nishat Afroz Wife of Md. Mushtaque Ahmed, Resident of Mohalla - Raham Khan, P.S. - Lahariasarai, Distt. - Darbhanga.

... .. Opposite Party/s

Appearance :

For the Petitioner/s :

For the Opposite Party/s :

CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH
ORAL JUDGMENT

Date : 22-02-2019

Heard learned counsel for the petitioners; learned A.P.P.

for the State and learned counsel for the opposite party no. 2.

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 under inherent jurisdiction of the Ho'ble Court for quashing the order dated 23.06.14, passed by learned C.J.M., Darbhanga in Lahariasarai P. S. Case No.- 370/2012, Tr. No.- 1335/14, whereby and where under cognizance has been taken against the petitioners for offences under section



384 and 427/34 of the I.P.C. which is bad illegal and misuse of the process of the Court.”

3. The allegation against the petitioners is that when the informant (opposite party no. 2) was getting the boundary wall constructed on her land, they had come there and demanded Rs. 1 Lakh as extortion and of demolishing the boundary wall.

4. Learned counsel for the petitioners submitted that the allegation is totally false and frivolous and only to pressurize them and the real owners of the land in question from contesting before the authorities, including revenue authorities as well as before the Court in Title Suit No. 290 of 2012. It was submitted that the same piece of land in the revenue records has been recorded in the name of the petitioners and their co-sharers, against which the so called vendor of the opposite party no. 2 has filed Survey Appeal which is pending since the year 2011. It was further submitted that the Title Suit filed by petitioner no. 2 and his brother against the opposite party no. 2 was for declaration of title and confirmation of possession. It was, thus, submitted that in the background of the petitioners claiming title over the land over which the opposite party no. 2 was getting her boundary constructed, it is totally unbelievable that they would come to the spot and demand only extortion. It was submitted that the person, who claims the



ownership and title of the land, would not ask for extortion and allow some other party to continue with construction. It was further submitted that the opposite party no. 2 has bought the land from one Mahmood Hajam (Alam) and when he, as of now, is not the recorded tenant, the opposite party no. 2 cannot claim title better than her vendor. It was submitted that the petitioner no. 1 has filed complaint bearing C.R. No. 1575 of 2012 against the opposite party no. 2 and others on 30.07.2012, i.e., much prior to filing of the present case, alleging that after committing forgery, the opposite party no. 2 had purchased the land from Mahmood Hajam (Alam).

5. Learned A.P.P. submitted that though there is allegation of demand of extortion but in view of civil litigation pending, the same appears to be improbable.

6. Learned counsel for the opposite party no. 2 submitted that she has already a house built and was living peacefully over it and only when she was getting boundary wall constructed, the petitioners demanded extortion. It was further submitted that the order against the vendor of the opposite party no. 2 before the revenue authorities is *ex parte* for which Survey Appeal is pending since the year 2011.



7. On a direct query of the Court to learned counsel for the opposite party no. 2 as to when much prior to the alleged incident in the year 2011 itself, her vendor had filed an appeal for getting his name in the revenue records and further, that prior to filing of the present case, the Title Suit has already been filed by the petitioner no. 2 against the opposite party no. 2, their claim being with regard to the title and possession of the land, how it can be believed that they would come and ask only for extortion, learned counsel could not offer any explanation.

8. Learned counsel for the opposite party no. 2, with regard to C.R. No. 1575 of 2012, submitted that cognizance has been taken but not against the opposite party no. 2. Learned counsel also produced before the Court a copy of the judgment of the Hon'ble Supreme Court dated 12.02.2019 in Criminal Appeal No. 255 of 2019 (Arising out of SLP (Crl.) No. 7513 of 2014) in **SAU. Kamal Shivaji Pokarnekar Vs. The State of Maharashtra & Ors.** in which it has been held that the correctness or otherwise of the allegations are to be decided only in the trial and at the initial stage of issuance of process it is not open to the Court to stifle the proceedings by entering into the merits of the contentions made on behalf of the accused and that the criminal complaint



cannot be quashed only on the ground that the allegations made therein appear to be of a civil nature.

9. 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.

10. The allegations against the petitioners, even if taken at its face value, that non fulfillment of demand of Rs. 1 Lakh extortion, led to the boundary wall being demolished, which is the fundamental ingredient in the F.I.R., and the same being falsified by the facts and circumstances which are not in dispute, clearly renders the allegation themselves unreliable. It is not in dispute that the petitioners have their names muted in the revenue records and against which the vendor of the opposite party no. 2 has filed Survey Appeal in the year 2011. Further, since the year 2012, a Title Suit is also pending between the parties, filed by the petitioner no. 2 and his brother, for declaration of title and confirmation of possession. Moreover, a complaint case had been filed against the opposite party no. 2 and two others alleging that through forgery, the land in question was sold to the opposite party no. 2. All these cases are prior in time to the present case. Just because cognizance has not been taken against the opposite party no. 2 in the case where it is alleged that through forgery sale deed



was executed in favour of the opposite party no. 2 would not mean that the issue of title was not in dispute. Once the basic factor is taken note of, it cannot be believed that persons who are claiming title and possession over the land would go and ask only for extortion, meaning thereby, that due to their sheer strength they are wanting some money without having legal right or title over the property. In the present case, the allegation not being that the petitioners dispossessed the opposite party no. 2 from the lands, the sole allegation of demand of extortion, in the considered opinion of the Court, is untrue. No prudent man would believe that persons who claim right and title over the land would go and on the site claim only extortion and allow the other side to build some construction over the same. Thus, by demanding extortion but allowing the other side to make construction over a land of which much prior the party is claiming its right, title and ownership, leaves no doubt in the mind of the Court that the allegation is totally untrue. With regard to the judgment relied upon by learned counsel for the opposite party no. 2 in the case of **SAU. Kamal Shivaji Pokarnekhar** (supra), the Court would only indicate that the Hon'ble Supreme Court has only reiterated that only on the ground of there being a civil nature of the case, criminal complaint should not be quashed. In the present case, the matter is not so



simple. As has been discussed above, basically the genesis is a civil dispute but that is not the reason which has persuaded the Court to interfere in the matter under its inherent powers under Section 482 of the Code. The primary reason is that from the facts and circumstances surrounding the case at hand, it is clear that the preset prosecution is only to harass the petitioners without there being any truth. Thus, the Court under such circumstances is required to exercise its power under Section 482 of the Code.

11. In this connection, it would be useful to refer to the judgment of the Hon'ble Supreme Court in **State of Haryana v. Bhajan Lal** reported as **1992 Supplementary (1) Supreme Court Cases 335** where at paragraph no. 102, categories have been laid 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 omission 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 judgment in the case of **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 Supreme Court Cases 699 at paragraph no. 7 has made the following observations:

“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. For reasons aforesaid, the application is allowed.

The entire criminal proceeding arising out of Laheriasarai P.S. Case No. 370 of 2012 (Tr. No. 1335 of 2014), including the order dated 23.06.2014, by which cognizance has been taken, stands quashed.

(Ahsanuddin Amanullah, J)

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