

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.536 of 2015

Arising Out of Case No.-229 Year-2013 Thana- GAYA COMPLAINT CASE District- Gaya

1. Santosh Kumar, Son of Ram Naresh Singh
2. Ram Naresh Singh Son of Late Raj Narayan Singh
3. Smt. Sushila Devi @ Sushila Kumari, wife of Sri Ram Naresh Singh
4. Moni Kumari Daughter of Sri Ram Naresh Singh
All R/o Vill.- Berhna, Shanti Tola, P.S.-Barh, Distt.-Patna.
5. Smt. Soni Sushmita Wife of Krishna Murari Sharma & Daughter of Sri Ram Naresh Singh Resident of Village-Sungarish, P.S.-Paraiya, Distt-Gaya, at present residing at vill-Berhna, Shanti Tola, P.S-Barh, Distt.-Patna

... .. Petitioner/s

Versus

1. The State Of Bihar
2. Smt. Kanti Devi Wife of Onkar Sharma Resident of Village-Sungarish, P.S-Paraiya, Distt-Gaya, at present residing as tenant in the house of Sri Ram Kumar Singh, Mohalla-Chhotki Delha, Bhaisyan Gali, P.S-Delha, Distt.-Gaya

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr. Sidhendra Narayan Singh with Mr. Jagannath Prasad Singh Advocates
For the State	:	Mr. Jharkhandi Upadhyay, APP
For the O.P. No.2	:	Mr. Arvind Kumar Singh with Mr. Ravindra Kumar Tiwary, Advocates

CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH
ORAL JUDGMENT

Date : 11-04-2019

Heard learned counsel for the petitioners; learned APP
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 the present criminal miscellaneous
application is being filed on behalf of
petitioners above named **who are daughter-in-
law and her parent, brother & sister of
Complainant-O.P. no. 2, for quashing of***



cognizance order dated 30-7-13 u/s 147, 323, 504 IPC and consequential order of issuance of bailable W/A, Non-bailable W/A & process u/s 82 Cr. P.C. dated 16-1-14, 25-4-14 & 19-8-14 respectively issued against petitioners illegally and without service of summon, passed by Sri A. K. Singh, J.M., 1st Class, Gaya in **Complaint Case no. 229 of 2013.**

3. The allegation against the petitioners is that they had come to the house of the complainant, who is the mother-in-law of the petitioner no. 5, and at the threat of pistol, forcibly entered into the house and abused the inmates and on protest they were assaulted and there was demand of Rs. 10,00,000/-. It was further alleged that under fear, Rs. 20,000/- cash and gold ornaments worth Rs. 3,00,000/- were handed over to the petitioners who are said to have fled away in a Bolero vehicle.

4. Learned counsel for the petitioners submitted that the entire complaint case is a counter blast to Complaint Case No. 6 (C) of 2010 filed by the petitioner no. 5 against her husband and in laws, including the opposite party no. 2. It was submitted that earlier the husband of the petitioner no. 5, who is the son of opposite party no. 2, had filed Matrimonial Title Suit No. 227 of 2009 on 06.11.2009, before the Principal Judge, Family Court, Gaya seeking judicial separation. However, the same was compromised on 01.11.2010 on the undertaking given by the son of opposite party no. 2 that he shall discharge his matrimonial



obligation and keep the petitioner no. 5 with him and by the petitioner no. 5 that she would also give due respect to the husband and his family members.

5. It was submitted that the son of opposite party no. 2 had also filed an affidavit before the Court below in the present case on 14.03.2011 that he shall take the petitioner no. 5 with him to the matrimonial home where she would be kept with full dignity and that he shall also maintain cordial relations with the family members of the petitioner no. 5. Similarly, the petitioner no. 5 had also filed an affidavit that she was ready to go and live in the matrimonial home and have cordial relationship with her in-laws. However, it was submitted, that the compromise did not work and ultimately the present complaint case was filed on 04.02.2013. Learned counsel submitted that on 17.05.2013, the opposite party no. 2 and her other family members were convicted in Complaint Case No. 6 (C) of 2010 and subsequent thereto, on 30.07.2013, cognizance has been taken against the petitioners under Sections 147, 323 and 504 of the Indian Penal Code in the present case and in the appeal filed by the opposite party no. 2 and her other family members, being Cr. Appeal No. 85 of 2013, the husband of the petitioner no. 5 filed an undertaking that he would take the petitioner no. 5 to his residence in the month of August as he was



on training. It was submitted that the conviction of opposite party no. 2 and her other family members was affirmed by judgment dated 11.10.2018 in Cr. Appeal No. 85 of 2013 by the Additional District and Sessions Judge-IV, Barh. It was submitted that for negotiating the amount of one-time-settlement, the High Court had granted provisional bail to the opposite party no. 2 and other family members by order dated 17.01.2019 in Cr. Revision No. 1365 of 2018 and Cr. Revision No. 82 of 2019.

6. It was further submitted that the allegations made in the complaint, besides being by way of a retaliatory measure to counter the situation faced by the opposite party no. 2 and her family members by filing of Complaint Case No. 6 (C) of 2010 by the petitioner no. 5, is also proved false from the allegations made in the complaint itself. It was submitted that the facts narrated are highly improbable that no prudent person would believe the same. It was submitted that it is not expected that the petitioners who live in another town would come to the house in the town of the opposite party no. 2 and commit the offence and the same would be permitted by the neighbours of the opposite party no. 2. It was further submitted that even otherwise, such an incident by the petitioners in the matrimonial home of the petitioner no. 5, i.e., by the relatives of the daughter-in-law of the opposite party no. 2, is



hard to believe. Learned counsel submitted that the allegation of demand of Rs. 10,00,000/- and under threat paying of Rs. 20,000/- and giving gold ornaments worth Rs. 3,00,000/- is also cosmetic and far-fetched. It was submitted that if such a major incident had taken place under the threat of pistol, it cannot be believed that the police would refuse to register an FIR. Learned counsel submitted that under similar circumstances, a Bench of this Court in **Bhola Yadav vs. State of Bihar** reported as **2017 (3) PLJR 138**, the relevant being at paragraphs no. 8, 9 and 14, has held that the society has not yet denigrated to the level where parents would commit theft in their own daughter's matrimonial home and accordingly the prosecution case was quashed. Learned counsel also referred to the decision of the Hon'ble Supreme Court in **State of Haryana v. Bhajan Lal** reported as **1992 Supplementary (1) Supreme Court Cases 335**. It was submitted that in the categories enumerated by the Hon'ble Supreme Court at paragraph no. 102 of the aforesaid judgment, the present case is covered under categories 5 and 7. Learned counsel submitted that despite the opposite party no. 2 and her family members taking provisional bail on the pretext of negotiating one-time-settlement, till date no steps have been taken by them in this regard.



7. Learned APP and learned counsel for the opposite party no. 2 submitted that the allegations are true and that after recording the statement of the witnesses, who have supported the prosecution story, the Court has rightly taken cognizance against the petitioners. With regard to the decision in **Bhola Yadav** (supra), learned counsel submitted that in the said case the allegation was that the accused had come to the house of the complainant and had committed theft whereas in the present case there is allegation of assault and taking away of cash and gold ornaments at the point of pistol and also demand of Rs. 10,00,000/-.

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. From the sequence of events, it is apparent that the present complaint case is a direct counter blast to Complaint Case No. 6 (C) of 2010 filed by the petitioner no. 5 against the opposite party no. 2 and her other family members. Besides the same resulting in conviction, which has been upheld in appeal, the allegations levelled against the petitioners in the present case, as has rightly been submitted by learned counsel for the petitioners, is highly improbable and unbelievable. At the cost of repetition, it



would be difficult for a prudent man to believe that five members, including three women, would come to a different city, that is, the house of the opposite party no. 2 and commit such offence without any fear of either the neighbours of the opposite party no. 2 or their own safety. Moreover, as has been rightly observed in **Bhola Yadav** (supra), the society has not yet denigrated to the level where the girl's family would go and commit such an offence in the house of her in-laws which, for all practical purposes, would shut the doors for any settlement between the parties. Moreover, the facts, as has been narrated and recorded earlier in the order which have not been controverted, clearly indicate that from the side of the petitioners, there has also been strong desire to settle the matter but there has been no matching response from the opposite party no. 2 and her other family members, which is a strong indication of lack of *bona fide* on their part. Further, the Court finds that reliance has rightly been placed by learned counsel for the petitioners on the decision of the Hon'ble Supreme Court in **Bhajan Lal** (supra), in which, at paragraph no. 102, categories have been enumerated where the Court ought to 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.”

10. The Court is also in agreement with the contention of learned counsel for the petitioners that the present case is covered under categories 5 and 7 of the aforesaid judgment in **Bhajan Lal** (supra) at paragraph no. 102.

11. Similarly, the Court finds that, broadly and substantially, the facts of **Bhola Yadav** (supra) are similar to the facts of the present case and in essence the reasoning in **Bhola Yadav** (supra) would also apply to the facts of the present case. The Court would also refer to paragraphs no. 12, 13 and 14 of the aforesaid judgment in **Bhola Yadav** (supra), which read as under:



“12. In Rajiv Thapar and Ors. vs. Madan Lal Kapoor [(2013) 3 SCC 330], the Hon'ble Supreme Court enumerated four steps required to be followed before invoking inherent jurisdiction by the High Court under Section 482 of the CrPC as under :-

"30. Based on the factors canvassed in the foregoing paragraphs, we would delineate the following steps to determine the veracity of a prayer for quashment raised by an accused by invoking the power vested in the High Court under Section 482 of the Cr.P.C.:-

30.1. Step one: whether the material relied upon by the accused is sound, reasonable, and indubitable i.e. the material is of sterling and impeccable quality ?

30.2. Step two: whether the material relied upon by the accused would rule out the assertions contained in the charges levelled against the accused i.e. the material is sufficient to reject and overrule the factual assertions contained in the complaint i.e. the material is such as would persuade a reasonable person to dismiss and condemn the factual basis of the accusations as false.

30.3. Step three: whether the material relied upon by the accused has not been refuted by the prosecution/complainant; and/or the material is such that it cannot be justifiably refuted by the prosecution/complainant?

30.4. Step four: whether proceeding with the trial would result in an abuse of process of the court, and would not serve the ends of justice?

30.5. If the answer to all the steps is in the affirmative, the judicial conscience of the High Court should persuade it to quash such criminal proceedings in exercise of power vested in it under Section 482 of the Cr.P.C. Such exercise of power, besides doing justice to the accused, would save precious court time, which would otherwise be wasted in holding such a trial (as well as proceedings arising therefrom) specially when it is clear that the same would not conclude in the conviction of the accused."



13. In Rishipal Singh vs. State of Uttar Pradesh and Anr. [(2014) 7 SCC 215], the Hon'ble Supreme Court in the similar circumstances observed: "it is no doubt true that the courts have to be very careful while exercising the power under Section 482 CrPC. At the same time we should not allow a litigant to file vexatious complaints to otherwise settle their scores by setting the criminal law into motion, which is a pure abuse of process of law and it has to be interdicted at the threshold...."

14. In view of the above settled position of law and having regard to the facts and circumstances of the case and after going through the criminal complaint filed against the petitioners and the criminal complaint filed by the daughter of petitioner no. 1 against the complainant and his family members much prior to the present complaint in question, I am of the considered opinion that it is a clear case of abuse of the process of law on the part of opposite party no. 2."

12. Further, it would be useful to refer to the judgment of the Hon'ble Supreme Court in **State of Karnataka v. L. Muniswamy** reported as **(1977) 2 Supreme Court Cases 699**, where, at paragraph no. 7, it 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.....”

13. In view of the discussions made hereinabove, the Court finds that the present case is *mala fide* and frivolous with the intention to wreak vengeance and harass the petitioners and also for oblique reason of countering the case filed by the petitioner no. 5 against the complainant and her other family members and, thus, clearly is an abuse of the process of the Court.

14. Accordingly, the application is allowed. The entire criminal proceeding arising out of Complaint Case No. 229 of 2013, including the order dated 30.07.2013 by which cognizance has been taken, pending before the Court below at Gaya, stands quashed.

(Ahsanuddin Amanullah, J)

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