

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.43410 of 2014

Arising Out of PS. Case No.-6 Year-2009 Thana- GAYA KOTWALI District- Gaya

Ashok Kumar Keshri Son of Late Shiv Lal @ Nathun Sao Resident of Mohalla-Purani Godam Lane Dhami Tola, P.S.-Kotawali, District-Gaya.

... .. Petitioner/s

Versus

1. The State Of Bihar.
2. Jugal Prasad Son of Late Kanhai Ram Resident of Mohalla-Purani Godown Lane Dhamitola, P.S.-Kotwali, District-Gaya.

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Ashok Kumar Sinha, Advocate
For the State : Mr. Anil Kumar, APP

CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH
ORAL JUDGMENT

Date : 30-01-2019

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

2. Despite service of notice on opposite party no. 2, nobody was present 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 application is being filed on behalf of the petitioner for quashing the order dated 30.04.2009 passed by learned I/c Chief Judicial Magistrate Gaya in connection with Kotwali P.S. Case No. 06 of 2009 corresponding to G.R. No. 52 of 2009 whereby and where under the learned I/c C.J.M, Gaya has took cognizance of the offence



under sections 147, 323, 405 of Indian Penal Code against the petitioner and others in a most mechanical manner without applying his judicial Mind.”

4. The allegation against the petitioner is that he entered into the house of the opposite party no. 2 along with 10-15 persons armed with *lathi*, *danda* and assaulted him and also threatened him to vacate the house.

5. Learned counsel for the petitioner submitted that he was the landlord of the premises in which the opposite party no. 2 resides. It was submitted that the premises was an ancestral property and upon the death of his brother, he was collecting the rent and later on, a title suit was also filed for evicting the opposite party no. 2 and fearing having to vacate the house, the opposite party no. 2 had filed a number of such false and frivolous cases. It was submitted that once the petitioner had filed an eviction suit, there does not remain any occasion to go and forcibly get the opposite party no. 2 evicted for the reason that if he wanted to evict him forcibly he would not have filed an eviction suit as it takes a long time for disposal of such suit. Learned counsel submitted that with regard to other cases also, coordinate Benches of this Court have interfered in the matter and quashed the proceedings. In this connection, he referred to the decision of a



coordinate Bench dated 16.09.2013 in Cr. Misc. No. 23955 of 2010 which had quashed the entire criminal proceeding which was initiated by the brother of the opposite party no. 2. He further referred to the decision of the coordinate Bench dated 13.10.2014 in Cr. Misc. No. 2018 of 2014 by which the complaint case filed by the family members of the opposite party no. 2 has been quashed. Learned counsel submitted that even from the allegations, it is quite unbelievable that the petitioner along with 10-15 persons would go and only threaten the opposite party no. 2 to vacate. It was submitted that had the intention been to forcibly evict them, the petitioner along with 10-15 persons were sufficient to complete the job of eviction and would not have returned only after threatening. Even with regard to the allegation of assault, it was submitted that the allegation is only general and omnibus in nature and no supporting evidence with regard to injury inflicted was brought on record. It was further submitted that since then the opposite party no. 2 has also been evicted from the premises pursuant to order passed by the Civil Court in the Eviction Suit.

6. Learned A.P.P. fairly submitted that in the background of the facts and circumstances of the case, the allegations made against the petitioner appears to be highly 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. The fact that the parties are landlord and tenant and there is a series of litigations and filing of similar cases by the opposite party no. 2 and his family members against the petitioner, which have been repeatedly quashed by various coordinate Benches of this Court, as also the nature of the allegation being vague and general assault and only threat to vacate the premises in the background of there being a proper eviction suit having been filed by the petitioner against the opposite party no. 2 which has resulted in the opposite party no. 2 vacating the premises, the Court finds that the present case was filed only with the intention to exert undue pressure on the petitioner for oblique reasons. Moreover, there being no supporting evidence brought before the Court with regard to any injury which may have been suffered by the opposite party no. 2 or his family members, the Court finds that such allegations are cosmetic in nature only for making the case grave against the petitioner.

8. Further, the Court finds it relevant to refer to the decision of the Hon'ble Supreme Court in the case of **State of Haryana v. Bhajan Lal** reported as **1992 Supplementary (1)**



Supreme Court Cases 335 where at paragraph no. 102 categories have been laid down 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 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.”

9. In the opinion of the Court, the present case is covered under categories 5 and 7 of the aforesaid judgment of the Hon’ble Supreme Court in the case of **Bhajan Lal** (supra) at paragraph no. 102.

10. In the aforesaid background, the Court finds that the prosecution is *mala fide*, untenable and solely intended to harass the petitioner.

11. Accordingly, the application is allowed. The entire criminal proceeding arising out of Kotwali P.S. Case No. 06 of 2009/ G.R. No. 52 of 2009, including the order dated 30.04.2009, by which cognizance has been taken, as far as it relates to the petitioner, stand quashed.

(Ahsanuddin Amanullah, J)

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