

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No. 31687 of 2014

Arising Out of Complaint Case No.-283 Year-2013 Thana- EAST CHAMPARAN
COMPLAINT District- East Champaran

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Ram Pramod Singh S/o Late Rana Lav Singh, officer incharge Harsidhi P.S.
East Champaran, resident of Village- Anchha, P.S. Daudnagar, District-
Aurangabad.

... .. Petitioner/s

Versus

1. The State of Bihar
2. Sudama Ram S/o Late Sukhan Ram resident of Village-Maguraha, P.S.
Govindganj, District- East Champaran.

... .. Opposite Party/s

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Appearance :

For the Petitioner/s	:	Dr. Leelawati Kumari, Advocate
For the State	:	Mr. Jharkhandi Upadhyay, A.P.P.
For the Opposite Party No. 2	:	None

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CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN
AMANULLAH

ORAL JUDGMENT

Date : 01-03-2019

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

2. Despite service of notice on opposite party no. 2 and
learned counsel entering appearance and name of learned counsel
also appearing in the cause list, 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 for the following
relief:

*“That this an application is being filed
for quashing of the order dated 28.04.2014 whereby*



and where under learned Judicial Magistrate Ist class Motihari took cognizance u/s 302, 420 of the I.P.C. and $\frac{3}{4}$ SC/ST Act against of the petitioner arising out of complainant case no. 283/2013 dated 08.2.2013 Tr. No. 1273/2014 for alleged offences registered U/S 302, 420, of the I.P.C. and $\frac{3}{4}$ SC/ST Act.”

4. However, learned counsel prayed for quashing of the entire criminal proceeding arising out of Complaint Case No. 283 of 2013 filed by the opposite party no. 2.

5. The opposite party no. 2. has filed the complaint case against the petitioner and one other person, both police officers, who at the relevant time were posted in Harsidhi P.S. in the District of East-Champaran. The petitioner was the Officer In-charge and the co-accused was his subordinate. The allegation is that the son of the opposite party no. 2, who had met with an accident being hit by a Bolero vehicle at about 10.30 P.M. on 04.02.2013 and was lying on the ground, when the complainant and his family members wanted to take him for treatment, the petitioner and co-accused prevented them and forcibly took his son for postmortem instead of taking him for treatment and further that the petitioner and co-accused abused the complainant by his caste name.

6. Learned counsel for the petitioner submitted that at the relevant time, he was holding the post of Officer In-charge of



Harsidhi P.S. It was submitted that the incident which took place was a simple case of hit and run which is the admitted position. It was submitted that for the same incident, Harsidhi P.S. Case No. 40 of 2013 was instituted under Sections 272/304(B) of the Indian Penal Code. Learned counsel submitted that the informant of the said case was the father of the deceased who is also the opposite party no. 2/ complainant in the present case. Learned counsel submitted that in the said F.I.R., there is narration of a different story. It was submitted that in the F.I.R., it is stated that the son of the informant was travelling on a motorcycle along with Deepak Kumar when they were hit by a Bolero vehicle due to which the son of the informant fell down and died soon thereafter. It was further stated that the injured Deepak Kumar was sent to Motihari for treatment. The registration number of Bolero vehicle was also disclosed. Learned counsel submitted that once at the earliest point of time, the opposite party no. 2 himself had filed the F.I.R. without raising any finger or accusation against the petitioner, who was the Officer In-charge of the local police station, the present complaint case having been filed after three days of the incident and making out a new story is totally false and vexatious. It was submitted that the petitioner was not even present at the spot, which would be clear from the fact that the F.I.R. lodged by the



opposite party no. 2 has been endorsed by one Ram Jivan Prasad Singh, who was the Assistant Sub-Inspector of Police in the same police station. Learned counsel submitted that the reason for false implication is obvious, that is, the lodging of Harsidhi P.S. Case No. 41 of 2013 on the same day i.e., 05.02.2013, against many named and unnamed persons relating to the incident arising out of the accident in which many villagers had gathered and were demonstrating and had also blocked the road and further had attacked the police party. It was submitted that the informant of the said case was the petitioner in the capacity of Officer In-charge of the local police station and in the same, relatives of the opposite party no. 2 had also been made accused. Learned counsel submitted that in such view of the matter, the delay in filing of the complaint and also the complaint relating to the same incident, but with a completely new story, when the opposite party no. 2 himself was the informant in the police case much earlier, the very complaint case is not maintainable in law. It was submitted that the petitioner had no personal grudge or enmity against the opposite party no. 2, which would be clear from the complaint itself as no motive has been assigned for the petitioner to prevent the complainant from taking his son for treatment or for abusing him by caste name. Learned counsel submitted that the absurdity



of the story of the complaint would be clear from the fact that two persons were travelling on the motorcycle which was hit by the Bolero vehicle and both fell and when one person, who was still alive, was sent for treatment, there could not have been any reason or occasion for anybody, much less the petitioner, not to send the son of opposite party no. 2 for treatment, had he been alive. It was submitted that this vital fact of there being another person travelling on the same motorcycle who was also hit and who being alive was sent for treatment to a Hospital at Motihari having been suppressed in the complaint, itself shows the frivolous nature of the complaint and the falsity of the story.

7. Learned A.P.P. submitted that though the cognizance taken by the Court below is on the basis of the materials before it, however, from the facts and circumstances of the case and there being three criminal cases relating to the same incident, the complaint case appears to have been filed for oblique reasons.

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. The authenticity of the complaint case, seen in the background of the complainant himself having filed an F.I.R. for the same incident, in which a different story has been stated than what has been



stated in the complaint case, has persuaded the Court to consider the aspects whether the entire complaint case is false and frivolous. In the police case in which the opposite party no. 2 himself is the informant, the simple case is that the son of the informant along with one Deepak Kumar was travelling on a motorcycle which was hit by a Bolero vehicle resulting in both of them falling and the son of the informant died soon thereafter whereas the other injured namely Deepak Kumar was sent for treatment to Motihari and no other complaint made with regard to any other person, compared with the version in the present complaint case, where a different story has been stated that the son of the complainant, despite only being injured and alive, still the police insisted to send the body for postmortem and not sending him for treatment, is totally unbelievable and, in fact, almost absurd. Learned counsel for the petitioner has rightly submitted that once another person was travelling with the son of the complainant on the same motorcycle which was hit and the other person being alive was sent to Motihari for treatment, there was absolutely no occasion or reason why the son of the complainant would not be sent for treatment if he had been alive. In fact, looking from a purely objective point of view, the police, if they had any *mala fide* intention, without taking the risk of declaring



the son of the opposite party no. 2 dead, would also have sent him for treatment to the Hospital at Motihari so as to prevent any allegation being levelled against them by any party. This not having been done is a clear cut indicator that only Deepak Kumar was alive whereas the son of the complainant was already dead when the police and other persons had arrived. Further, the Court finds the contention of learned counsel for the petitioner that the present complaint case, which has been filed after three days of the incident, is a direct counter blast to the case filed by the petitioner in the capacity of being the Officer In-charge of the local police station with regard to the violent incident which took place as a result of the death of the son of the opposite party no. 2 by the villagers, many of whom have been named, which includes the relatives of the opposite party no. 2. Further, learned counsel for the petitioner has also drawn the attention of the Court to Annexure-4 which contains copies of the reports relating to injuries suffered by the petitioner as well as other policemen in the incident. All this clearly indicates that the incident, as narrated in the complaint case, is totally removed from the truth. At this juncture, the Court would also refer to the provision of Section 210 of the Code which provides as under:

“210. Procedure to be followed when there is a complaint case and police investigation



in respect of the same offence.-(1) *When in a case instituted otherwise than on a police report (hereinafter referred to as a complaint case), it is made to appear to the Magistrate, during the course of the inquiry or trial held by him, that an investigation by the police is in progress in relation to the offence which is the subject-matter of the inquiry or trial held by him, the Magistrate shall stay the proceedings of such inquiry or trial and call for a report on the matter from the police officer conducting the investigation.*

(2) If a report is made by the investigating police officer under section 173 and on such report cognizance of any offence is taken by the Magistrate against any person who is an accused in the complaint case, the Magistrate shall inquire into or try together the complaint case and the case arising out of the police report as if both the cases were instituted on a police report.

(3) If the police report does not relate to any accused in the complaint case or if the Magistrate does not take cognizance of any offence on the police report, he shall proceed with the inquiry or trial, which was stayed by him, in accordance with the provisions of this Code.”

9. The aforesaid also has not been followed in the present case. Moreover, from the charge sheet submitted in Harsidhi P.S. Case No. 40 of 2013 filed by the opposite party no. 2 and cognizance order, copies of which have been brought on record in the supplementary affidavit, it is clear that the driver of the vehicle namely Prashant Giri has been chargesheeted and cognizance also taken under Section 279/304(A) of the Indian Penal Code.



10. In the present case this Court finds that even the impact of the provision of Section 197 of the Code which protects public servants in discharge of official duty has not been considered by the Court when clearly it is admitted in the complaint itself that the petitioner in the capacity of a police officer had come to the site of the accident and had used/abused his power for committing the alleged offence.

11. 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 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 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.”

12. The present case, in the opinion of the Court is covered under categories 5, 6 and 7 of the aforesaid judgment in the case of **Bhajan Lal** (supra) at paragraph no. 102.



13. Similarly, the Hon'ble Supreme Court in **State of Karnataka v. L. Muniswamy** reported as (1977) 2 SCC 699, at paragraph no. 7 has been 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.....”

14. Similarly, the Hon'ble Supreme Court in **State of Karnataka v. M. Devendrappa** reported as 2002(3) SCC 89, while considering the ambit of Section 482 of the Code, has held at paragraphs no. 6 and 8 as under:

“6. Exercise of power under Section 482 of the Code in a case of this nature is the exception and not the rule. The section does not confer any new powers on the High Court. It only saves the inherent power which the Court possessed before the enactment of the Code. It envisages three circumstances under which the inherent jurisdiction may be exercised, namely, (i) to give effect to an order under the Code, (ii) to prevent abuse of process of Court, and (iii) to otherwise secure the ends of justice. It is neither possible nor desirable to lay down any inflexible rule which would govern the



exercise of inherent jurisdiction. No legislative enactment dealing with procedure can provide for all cases that may possibly arise. Courts, therefore, have inherent powers apart from express provisions of law which are necessary for proper discharge of functions and duties imposed upon them by law. That is the doctrine which finds expression in the section which merely recognizes and preserves inherent powers of the High Courts. All Courts, whether civil or criminal possess, in the absence of any express provision, as inherent in their constitution, all such powers as are necessary to do the right and to undo a wrong in course of administration of justice on the principle "quande lex aliquid aliqui concedit, concedere videtur et id sine quo res ipsa, esse non potest" (when the law gives a person anything it gives him that without which it cannot exist). While exercising powers under the Section, the Court does not function as a Court of appeal or revision. Inherent jurisdiction under the section though wide has to be exercised sparingly, carefully and with caution and only when such exercise is justified by the tests specifically laid down in the Section itself. It is to be exercised ex debito justitiae to do real and substantial justice for the administration of which alone Courts exist. Authority of the Court exists for advancement of justice and if any attempt is made to abuse that authority so as to produce injustice, the Court has power to prevent abuse. It would be an abuse of process of Court to allow any action which would result in injustice and prevent promotion of justice. In exercise of the powers Court would be justified to quash any proceeding if it finds that initiation/continuance of it amounts to abuse of process of Court or quashing of these proceedings would otherwise serve the ends of justice. When no offence is disclosed by the complaint, the Court may examine the question of fact. When a complaint is sought to be quashed, it is permissible to look into the materials to assess what the complainant has alleged and whether any offence is made out even if the allegations are accepted in toto.

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8. *In dealing with the last case, it is important to bear in mind the distinction between a case where there is no legal evidence or where there is evidence which is clearly inconsistent with the accusations made, and a case where there is legal evidence which, on appreciation, may or may not support the accusations. When exercising jurisdiction under Section 482 of the Code, the High Court would not ordinarily embark upon an enquiry whether the evidence in question is reliable or not or whether on a reasonable appreciation of it accusation would not be sustained. That is function of the trial Judge. Judicial process should not be an instrument of oppression, or, needless harassment. Court should be circumspect and judicious in exercising discretion and should take all relevant facts and circumstances into consideration before issuing process, lest it would be an instrument in the hands of a private complainant to unleash vendetta to harass any person needlessly. At the same time the section is not an instrument handed over to an accused to short-circuit a prosecution and bring about its sudden death. The scope of exercise of power under Section 482 of the Code and the categories of cases where the High Court may exercise its power under it relating to cognizable offences to prevent abuse of process of any Court or otherwise to secure the ends of justice were set out in some detail by this Court in State of Haryana v. Bhajan Lal. A note of caution was, however, added that the power should be exercised sparingly and that too in rarest of rare cases.....”*

15. From the discussions made hereinabove, the Court finds that the present prosecution against the petitioner is *mala fide*, untenable and solely intended to harass him.

16. Accordingly, the application is allowed. The entire criminal proceeding arising out of Complaint Case No. 283 of



2013, including the order dated 28.04.2014 by which cognizance
has been taken, as far as it relates to the petitioner, stand quashed.

(Ahsanuddin Amanullah, J.)

P. Kumar

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