

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.17425 of 2013

Arising Out of PS. Case No.-130 Year-2011 Thana- SOHSARAI District- Nalanda

-
1. Sudhir Kumar @ Sudhir Chandra, S/O Late Ramchandra Lal @ Doctor Ghose R/O Mohalla - Khasganj, P.S. Sohsarai, District – Nalanda.
 2. Madhu Kumari W/O Sudhir Kumar @ Sudhir Chandra R/O Mohalla - Khasganj, P.S. Sohsarai, District – Nalanda.

... .. Petitioner/s

Versus

1. State Of Bihar.
2. Mintu Kumar @ Ratan Lal, S/O Baldeo Prasad, R/O Mohalla - Sohdi, P.S. Sohsarai, District – Nalanda.

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr. Sudama Singh, Advocate Mr. Shamsheer Bahadur Pandey
For the Opposite Party/s :		Mr. Ram Praveesh Kumar, Advocate
For the State	:	Mr. Jharkhandi Upadhyay, APP Mr. Arun Kumar Pandey, Advocate

CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN
AMANULLAH

ORAL JUDGMENT

Date : 24-01-2019

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 for the following relief:

“That this is an application for quashing the order dated 10.5.2012, passed by learned Chief Judicial Magistrate, Bihar Sharif, Nalanda in Sohsarai P.S. Case No. 130/11 whereby and whereunder learned Chief Judicial Magistrate, Bihar Sharif, Nalanda, was pleased to take cognizance against the petitioners under Sections 420, 406, 385/34 I.P.C.”

3. The allegation against the petitioners is that initially, with regard to 18 ½ decimals of land, the petitioner no. 1 had executed a power of attorney on which the petitioner no. 2, who is the wife of petitioner no. 1, was a witness for sale and that despite taking money, when the five decimals from the said land still remained to be sold, the power of attorney was cancelled. The opposite party no. 2 has further alleged that at gun point, certain papers were got signed by the petitioners from the opposite party no. 2.

4. Learned counsel for the petitioners submitted that present is a case where a totally civil dispute at best, has been given the colour of a criminal case which is totally false, frivolous, untenable and abuse of the process of the Court. It was submitted that from the plain reading of the complaint, the matter



relates to a dispute as to whether the power of attorney in favour of the opposite party no. 2 was wrongly cancelled by the petitioner no. 1 and whether the opposite party no. 2 would still have a right to deal with the remaining five decimals of land, as per the original power of attorney in his favour. It was submitted that the allegation of getting papers signed at gun point is only for the purposes of adding serious sections being cosmetic addition to the entire story. Moreover, it was submitted that the complaint has been filed after eight days of the alleged occurrence, for which there is no explanation.

5. Learned A.P.P. fairly submitted that from the reading of the complaint, except for the portion where it has been alleged that the petitioners at gun point got plain papers signed by the opposite party no. 2, the dispute is purely civil in nature.

6. Learned counsel for the opposite party no. 2 submitted that the petitioners have cheated the opposite party no. 2 by cancelling the power of attorney despite getting payment for the lands in question.

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 plain reading of the complaint as a whole clearly discloses that it is a



purely civil dispute. Further, the opposite party no. 2, has himself admitted that the payment he gave to the petitioners was after the last registration/sale of land through the opposite party no. 2, for which an excuse is created that as opposite party no. 2 is not a well read person, he did not see that instead of putting the date as 2011, 2010 was written. This excuse cannot be accepted. Further, the law relating to power of attorney is well settled. It is at the discretion of the executor and he has full authority to revoke such power of attorney at any point of time without assigning any reason. Moreover, since the opposite party no. 2 has not shown any payment made by him and accepted by the petitioners, after the revocation of power of attorney in his favour for the lands in question; for establishing such payment and for getting the right to deal with the remaining lands, can only be granted by a Civil Court of competent jurisdiction. The addition that at gun point, certain papers were got signed by the petitioners from the opposite party no. 2, clearly, in the opinion of the Court, is an ingenious addition only to add serious sections and to give some criminal colour to the story. The same appears to be totally unbelievable and improbable.

8. In this connection, the law relating to inherent power under Section 482 being utilized is dealt with in paragraph no. 102



of the judgment of the Hon'ble Supreme Court in the case of **State of Haryana vs. Bhajan Lal** reported as **1992 Supp (1) SCC 335**

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 exercise.

(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 Court finds that the present case comes under category 7 of the said decision of the Hon’ble Supreme Court in the case of **Bhajan Lal** (supra) at paragraph no. 102 of the said judgment.

10. Moreover, the Supreme Court in the case of **Indian Oil Corpn. v. NEPC India Ltd.** reported as **(2006) 6 SCC 736**, at paragraph no. 13, has held thus:

“13. Any effort to settle civil disputes and claims, which do not involve any criminal offence, by applying pressure through criminal prosecution should be deprecated and discouraged.....”



11. Similarly, with regard to the High Court quashing criminal proceeding to prevent abuse of the process of the Court or for the ends of justice, the Hon'ble Supreme Court in the case of **State of Karnataka v. L. Muniswamy reported as (1977) 2 SCC 699**, at paragraph no. 7, 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.....”

12. In view of the aforesaid, the Court finds that the prosecution in the present case is *mala fide*, untenable and solely with an intention to harass the petitioners and allowing the same to continue would be an abuse of the process of the Court. The opposite party no. 2 has not taken the course available to him by moving the Civil Court of competent jurisdiction for his grievance has attempted to take undue advantage of the process of the Court.



13. Accordingly, the application is allowed. The entire criminal case arising out of Sohsarai P.S. Case No. 130 of 2011, including the order taking cognizance dated 10.05.2012, stands quashed.

14. Let the lower Court records be returned forthwith.

(Ahsanuddin Amanullah, J)

P. Kumar

AFR/NAFR	
U	
T	

