

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.46281 of 2013

Arising Out of Case No.-359 Year-2011 Thana- PATNA COMPLAINT CASE District- Patna

=====

Pradeep Kumar Singh S/O Shri Basudeo Pd. Singh Resident Of Mohalla- A-
43, Magistrate Colony Patna, P.S.- Rajiv Nagar District- Patna.

... .. Petitioner/s

Versus

1. The State Of Bihar
2. Manikant Mandal S/O Shri Tarni Pd. Mandal Resident Of Mohalla Patrakar
Nagar (Police Campus) P.S. Patrakar Nagar, District- Patna.

... .. Opposite Party/s

=====

Appearance :

For the Petitioner/s : Mr. Alok Kumar Sinha, Sr. Advocate with
Mr. Bhola Kumar and
Mr. Ashish Sinha, Advocates

For the State : Mr. Jharkhandi Upadhyay, APP

For the O. P. No. 2 : Mr. Rajesh Kumar Sinha with
Mr. Rajesh Mohan, Advocates

=====

CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH

ORAL JUDGMENT

Date : 28-02-2019

Heard learned counsel for the petitioner; learned
Additional Public Prosecutor for the State and learned counsel
for the opposite party no. 2.

2. The present application has been filed under
Section 482 of the Code of Criminal Procedure, 1973 (hereinafter
referred to as the 'Code') for the following relief:



“That this application is for quashing against the order dated 21.09.13 passed in Complaint case no. 395C/11 by Shri Prabal Dutta, J.M. 1st Class Patna where by and where under a discharge petition filed by the petitioner on 6.2.13, has been rejected without consider material available on record and further directed to put up this case on 2.11.13 for framing at Charge. All the accused persons are directed to present on the next date.”

3. The opposite party no. 2 filed Complaint Case No. 359C of 2011 against the petitioner and three others on 09.02.2011 alleging that the complainant/opposite party no. 2 had given a friendly loan of Rs. 1 Lakh to the accused and when the complainant met with an accident on 08.07.2010 and wanted the money to be returned, they refused to do so on the plea that it would be adjusted in the rent. It was stated that when the opposite party no. 2 informed them that he would soon get government accommodation, the accused stopped water and electric supply and also threatened to not return the amount. It was further stated that the petitioner's father had also lodged Rajiv Nagar P.S. Case No. 97 of 2010 on 09.07.2010 against the complainant and another tenant on suspicion of committing theft in his house which, upon investigation, has been found to be false and final form had been submitted. It was alleged that on 07.02.2011, when the complainant was out of station on official work, the accused, including the petitioner, had come to the



portion of the house which was under the occupancy of the opposite party no. 2 and his family, and had started throwing away stuff for getting the premises vacated in which two sons of the opposite party no. 2 were badly beaten up and cash of Rs. 4,000/- and gold and silver ornaments worth Rs. 2 Lakhs were taken and the mobile phone of one of the sons of the opposite party no. 2 was forcibly snatched by the co-accused Rajesh Kumar and given to the petitioner. It was stated that the opposite party no. 2, upon return, requested the accused to return the money and the ornaments and the mobile but he was pushed and abused. It was further stated that he had gone to the local police station but the complaint was not taken and he was advised to go to Court.

4. Learned counsel for the petitioner submitted that the complaint case is totally false and frivolous and has been filed for oblique reasons. It was submitted that the opposite party no. 2 is the tenant in the house of the petitioner's father and that is why his brother and father had also been made accused. It was submitted that the allegation of giving Rs. 1 Lakh loan cannot be believed for the reason that no person, especially a tenant, would take a Rs. 40,000/- loan from a friend for giving loan to the landlord. Learned counsel submitted that, in fact, the opposite



party no. 2 was in default of rent for two years due to which he had filed a petition before the Senior Superintendent of Police, Patna informing him that the opposite party no. 2, being a tenant, despite being asked to vacate, had misbehaved with his father in his presence on 09.07.2010 and his house was robbed in which they suspected the role of the opposite party no. 2. The said complaint was made on 16.12.2010 and copies were forwarded to the Chief Minister, Bihar; Home Secretary, Bihar; Director General of Police, Bihar; Commissioner, Patna Division; DIG, Patna Range and the District Magistrate, Patna. It was submitted that the Home Department had forwarded the complaint to the Director General of Police on 06.01.2011. Learned counsel submitted that immediately upon coming to know of the complaint by the petitioner against him, the opposite party no. 2 had filed the present complaint on 09.02.2011. Learned counsel submitted that the falsity of the allegation would also be apparent from the fact that it cannot be believed that the sons of the opposite party no. 2, even after being badly beaten up, would remain in the house without seeking any medical aid and would also not approach any colleague(s) of the father, who was posted in a local police station in the town itself. Learned counsel further submitted that the allegation that the household articles of the



opposite party no. 2 were thrown out by the accused and were lying outside is also not believable as it is not alleged that the opposite party no. 2 and his family were ousted from their premises and, thus, there being no explanation as to why, even if the articles were thrown out, the opposite party no. 2 did not bring back the same into the house. Learned counsel submitted that once there was such a serious incident, when both the sons of the opposite party no. 2 were badly beaten and cash worth Rs. 4,000 and gold and silver jewellery amounting to Rs. 2 Lakhs were taken away by the accused/petitioner, it is unbelievable that the police would still not register any case or ensure recovery of the stolen items, more so when the victim himself was a police officer. Learned counsel drew the attention of the Court to the fact that on a query of the Court during recording of his statement, the opposite party no. 2 had categorically stated that he did not inform his superior police officer(s) with regard to the incident. Learned counsel also drew the attention of the Court to the material contradiction in what has been averred in the complaint and the statement of the witnesses recorded during enquiry. It was submitted that the complaint, being filed on 09.02.2011, i.e., two days after the incident, is expected to be after careful and due deliberation and is not supposed to have any



contradiction on facts, but the same stand materially and seriously controverted, when the sons of the opposite party no. 2 in their depositions have stated that the mobile phone of one of them was snatched, SIM removed and the mobile set broken. This, learned counsel submitted, is in stark contrast to what has been stated in the complaint, where it is alleged that the mobile phone was snatched and given to the petitioner. Thus, it was submitted that taking an overall view also, the allegations seem to be highly improbable to be believed. It was submitted that due to rent dispute, the false complaint case has been registered. It was submitted that since then, the opposite party no. 2 has vacated the house. Learned counsel submitted that the petitioner is an Assistant Executive Engineer in the Border Roads Organization since 2002 and was doing M.Tech. (Transportation Engineering) from the Department of Civil Engineering, Indian Institute of Technology, Roorkee (hereinafter referred to as 'I.I.T.') and on the alleged date was pursuing his studies there with regard to which a certificate has also been issued. In this connection, learned counsel drew the attention of the Court to Annexure-5, which is copy of the certificate issued by the O.C.M-Tech. & M.Tech.-Dissertation Supervisor of Indian Institute of Technology, Roorkee, Department of Civil



Engineering which certifies that from 01.02.2011 to 28.02.2011, the petitioner was in the institute and was working on his M.Tech. thesis. Learned counsel, in support of his contentions, relied upon the decisions of the Hon'ble Supreme Court in **M/s Pepsi Foods Ltd. v. Special Judicial Magistrate** reported as **AIR 1998 SC 128**, the relevant being at paragraphs no. 28, 29 and 30; **Vineet Kumar v. State of U.P.** reported as **AIR 2017 SC 1884**, the relevant being at paragraph no. 39. Learned counsel also referred to the decision of a co-ordinate Bench of this Court in **Mumtaz Alam v. State of Bihar** reported as **2013 (2) PLJR 82**, the relevant being at paragraphs no. 18, 19 and 20. Learned counsel submitted that the present case is an abuse of the process of the Court and has been filed for oblique reasons to wreak vengeance and, thus, the Court may interfere and quash the entire criminal proceeding arising out of the complaint case.

5. Learned A.P.P. submitted that the Court below has found sufficient material to proceed with the case and, thus, has rightly rejected the petition seeking discharge and the order impugned does not need any interference. However, on a query of the Court with regard to its inherent power under Section 482 of the Code, which requires the Court to go into the larger aspect as to whether the criminal case/proceeding is itself an abuse of



the process of the Court and in such view of the matter, where the complaint case appears to have been filed for oblique reasons, learned A.P.P. submitted that this Court has the jurisdiction to go into that aspect and take into consideration the totality of the situation.

6. Learned counsel for the opposite party no. 2 submitted that since the petition for discharge has been dismissed under Section 245 of the Code, the stage has crossed from cognizance and framing of charge would be under Section 244 of the Code and the Court having found sufficient material to proceed has rightly rejected the petition for discharge. It was submitted that at such stage, the Court is not to consider whether the trial would result in conviction and has only to see that *prima facie*, there are materials to justify framing of charge and holding trial. For such proposition, learned counsel referred to the decision of the Hon'ble Supreme Court in **Sonu Gupta v. Deepak Gupta** reported as **2015 (2) PLJR (SC) 321**, the relevant being at paragraphs no. 8 and 12 and that of a co-ordinate Bench of this Court in **Md. Umer Zahid v. Md. Fazlur Rahman** reported as **2017 (4) BBCJ V-31**.



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.

8. The relationship between the parties is the first and foremost factor which persuades the Court to take a deeper look as to whether the entire criminal proceeding is an abuse of the process of the Court for wreaking vengeance on the petitioner. The opposite party no. 2 was the tenant in the house of the father of the petitioner at the relevant point of time. Further, he was a Sub-Inspector of Police posted in the district of Patna itself. These two factors clearly put him in an advantageous position as compared to the petitioner with regard to lodging and thereafter, pursuing a criminal matter, especially with the police. In such background, the further fact that a complaint was made by the petitioner before the officials with regard to misuse by the opposite party no. 2 of the tenancy granted to him by the father of the petitioner and also his misbehaviour, including his suspected involvement in theft in the house of the petitioner, for which a criminal case was lodged, and most importantly all these developments being prior in time to the complaint filed by the opposite party no. 2, changes the perspective in which the allegations in the complaint have to be viewed. The allegation



that the sons of the opposite party no. 2 were badly beaten up and still did not either inform anybody, much less any colleague of the opposite party no. 2, who was a police officer posted in Patna itself and also having not availed any medical treatment, as no medical report has been brought on record by the opposite party no. 2, either before this Court or the Court below, clearly raises serious doubts with regard to the veracity of the allegations. Further, the averment that Rs 1 Lakh cash was given as friendly loan by the opposite party no. 2 without any corroborative or documentary evidence to prove the same, especially when it is stated that Rs 40,000/- cash was withdrawn from the account of the complainant, Rs. 20,000/- cash was already with him and Rs. 40,000/- cash was taken by him from his friend, one Madan Mandal, for giving to the petitioner and his father, seems to be far-fetched. It is not in the normal course of conduct of a prudent person to do so, for the reason, that a person may have surplus money which he may give as a friendly loan to someone else or even his landlord, but somebody taking loan of a substantial amount from a friend for giving loan to a third party, appears highly improbable. At this stage, the Court would observe that the said Madan Mandal was neither made a witness in the complaint nor his deposition recorded before the Court below.



9. Coming to the issue of the opposite party no. 2 going to the police station and him being advised to go to Court and file a case, appears equally unbelievable, inasmuch as, once there is an allegation of severe assault on two persons and further, of theft of Rs. 4,000/- cash and gold and silver jewellery worth Rs. 2 Lakhs, there cannot be any question of the police refusing to lodge a complaint in the matter. The Court further finds that opposite party no. 2 admitting in his examination before the Court below that he had not informed or gone to any superior officer(s) is another pointer that such incident did not occur. As has rightly been submitted by learned counsel for the petitioner, a person would not leave his household articles lying outside the house even after he has returned to his house and was still residing in that house, as has been alleged in the complaint, which was filed two days after the alleged occurrence. Thus, there being no statement or record with regard to advancing of friendly loan or the injury suffered and also no explanation as to what effective steps were taken by the opposite party no. 2, in view of such grave allegation of brutal assault on his sons and theft of Rs. 4,000/- cash and gold and silver jewellery worth Rs. 2 Lakhs, despite he being a Sub-Inspector posted in a police station in Patna itself, such occurrence having taken place itself



becomes doubtful. In such scenario, the complaint by the petitioner before the higher authorities just a few weeks prior to lodging of the complaint by the opposite party no. 2 and certificate being granted by I.I.T. that the petitioner was in Roorkee pursuing his thesis on the relevant date, are also strongly indicative with regard to the criminal case being totally frivolous and untrue. The contention of learned counsel for the petitioner that the complaint case is a counter-blast to the complaint made by him to the authorities against the opposite party no. 2 and the genesis thereof lies in dispute related to rent, is also fortified by the conduct of the opposite party no. 2, as learned counsel representing him has admitted, that within two weeks of the complaint being filed, he had vacated the house. This clearly indicates that he had filed the complaint case to put pressure on the petitioner and his family members not to pursue the matter, either before the higher authority or with regard to dues of rent.

10. Hence, taking an overall view of the matter, the Court finds that the incident, as alleged in the complaint case, appears to be highly improbable.

11. In this context, reliance placed by learned counsel for the petitioner on the decisions in **M/s Pepsi Foods Ltd.** (supra); **Vineet Kumar** (supra) and **Mumtaz Alam** (supra) lend



support to his contention with regard to interference in the present matter. As far as the decisions referred to by learned counsel for the opposite party no. 2 in **Sonu Gupta** (supra) by the Hon'ble Supreme Court and **Md. Umer Zahid** (supra) by a co-ordinate bench of this Court are concerned, there cannot be any issue with the proposition of law that the Court has to only look at whether or not sufficient material exists for proceeding with the trial. However, the same cannot be said to be a precedent of law with regard to the Court considering the matter under its inherent jurisdiction under Section 482 of the Code, which is to prevent the abuse of the process of the Court and to secure the ends of justice. In this connection, the Court would refer to the decision of the Hon'ble Supreme Court in **State of Karnataka v. L. Muniswamy** reported as (1977) 2 SC 699 where at paragraph no. 7, the following observations have been made:

“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. 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.

xxxxx

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.....”

13. Thus, the Court finds that the judgments relied upon by learned counsel for opposite party no. 2 do not come to his aid as in the present matter, this Court is considering whether the entire proceeding arising out of the complaint case is required to be interfered with or not.

14. Similarly, the Hon'ble Supreme Court in **State of Haryana v. Bhajan Lal** reported as **1992 Supp (1) SCC 335** at paragraph no. 102 has enumerated categories where the Court would 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.”

15. The present case, in the opinion of the Court, is covered under category 7 of the aforesaid judgment in **Bhajan Lal** (supra) at paragraph no. 102.

16. The Court would also refer to the decision of the Hon’ble Apex Court in **Vineet Kumar** (supra) on which learned counsel for the petitioner has relied, specifically paragraph no. 39, where it has been held as under:

“39. Inherent power given to the High Court under Section 482 Cr.P.C. is with the purpose and object of advancement of justice. In case solemn process of Court is sought to be abused by a person with some oblique motive, the Court has to thwart the attempt at the very threshold. The Court cannot permit a



prosecution to go on if the case falls in one of the Categories as illustratively enumerated by this Court in State of Haryana v. Bhajan Lal. Judicial process is a solemn proceeding which cannot be allowed to be converted into an instrument of operation or harassment. When there are material to indicate that a criminal proceeding is manifestly attended with mala fide and proceeding is maliciously instituted with an ulterior motive, the High Court will not hesitate in exercise of its jurisdiction under Section 482 Cr.P.C. to quash the proceeding under Category 7 as enumerated in State of Haryana v. Bhajan Lal, which is to the following effect:

“(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.”

Above Category 7 is clearly attracted in the facts of the present case. Although, the High Court has noted the judgment of the State of Haryana v. Bhajan Lal, but did not advert to the relevant facts of the present case, materials on which Final Report was submitted by the I.O. We, thus, are fully satisfied that the present is a fit case where High Court ought to have exercised its jurisdiction under Section 482 Cr. P.C. and quashed the criminal proceedings.”

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

18. Accordingly, the application is allowed. The entire criminal proceeding arising out of Complaint Case No. 359C of 2011, including the subsequent orders, stand quashed.



19. Let the Lower Court Records be returned
forthwith.

(Ahsanuddin Amanullah, J)

Anjani/-

AFR/NAFR	AFR
U	
T	

