

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.44552 of 2013

Arising Out of PS. Case No.-81 Year-2005 Thana- BHOJPUR COMPLAINT CASE District-
Bhojpur

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Siya Kant Singh (S. K. Singh) Son of Hari Shanker Singh, State Bank of
India, Branch Rajendra Nagar, Near Moti Cinema, Ara

... .. Petitioner/s

Versus

1. State of Bihar.
2. Sanjay Kumar Ram Son of Late Sarju Nath Ram, Resident of Village-
Kurkuri, Post Office- Bankat, Police Station- Agiaon, District- Bhojpur

... .. Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Rajeev Kumar Sinha, Advocate
For the State : Mr. Raj Ballabh Singh, A.P.P.

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CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN
AMANULLAH

ORAL JUDGMENT

Date : 14-02-2019

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

2. Despite service of notice on opposite party no. 2 and
learned counsel entering appearance on his behalf and name also
being printed in the cause list, nobody was present to assist the
Court, 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:

“This this application is for quashing the order dated 27.06.2013 passed by the Judicial Magistrate, Ist Class Ara in complaint case no. 81(C)/05- Tr. No. 3392/08 by which the learned Magistrate has rejected the petition for discharge filed by the petitioner and against the direction for framing charge and also for quashing the entire prosecution of the petitioner in complaint case no. 81(C)/05.”

4. The allegation against the petitioner and two others is that they had forcibly made the opposite party no. 2 (complainant) sign certain papers and had also not delivered the tractor and only given him the engine of the tractor and had also abused him using caste slang and manhandled him.

5. Learned counsel for the petitioner submitted that he was a Clerk in the Bank at the relevant time and even otherwise, the role of the Bank is limited to sanction of loan and the amount goes to the dealer, who is supposed to give the tractor to the party concerned. Learned counsel submitted that from the entire reading of the complaint case, it would be clear that the allegations are so absurd that it cannot be believed. Learned counsel submitted that there was no reason for the petitioner to commit such offence as he had not personal interest in such loan even if the opposite party



no. 2 had not taken such loan from the Bank. It was further submitted that the complainant admitting that he was given only the engine which he brought to the house is totally absurd and unbelievable that only the engine would be taken by the opposite party no. 2 and brought to his house. Learned counsel submitted that the other allegations of forcing to sign papers and of abuse and assault, from the very reading of the sequence of events, the same are highly improbable and unbelievable. Learned counsel submitted that co-accused Harendra Kumar Singh, who is the dealer of the tractor which the opposite party no. 2 had bought, had moved the Court in Cr. Misc. No. 8383 of 2014 against the common order of cognizance dated 14.12.2013 in the present case and a co-ordinate Bench of this Court by order dated 10.11.2014 had set aside the entire proceeding against him, including the order of cognizance.

6. Learned A.P.P. submitted that the Court below has found sufficient material and has rightly taken cognizance.

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 contention of learned counsel for the petitioner is correct that the narration of events in the complaint for a criminal case to proceed



are highly improbable so as to make a prudent man believe the same. Moreover, the story of abuse by calling caste name and assault by fists and slaps, in the background of other connected facts, as narrated in the complaint itself, clearly indicates that the same are cosmetic in nature. Further, the Court finds that there was no personal interest of the petitioner with regard to the loan being taken by the opposite party no. 2 for him to be involved in such incident or commit the acts alleged against him. In this connection, the Court would refer to the judgment of the Hon'ble Supreme Court in **State of Haryana vs. Bhajan Lal** reported as **1992 Supp (1) SCC 335**, in which the Hon'ble Supreme Court has categorized situations where the Court would interfere under its inherent jurisdiction under Section 482 of the Code. The same is contained in paragraph no. 102 of the judgment which 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.”

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

9. Moreover, the Court finds it relevant to notice the observation of the Hon’ble Supreme Court in **State of Karnataka v. L. Muniswamy** reported as (1977) 2 SCC 699, at paragraph no. 7, which reads 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.....”

10. For reasons aforesaid, the Court finds that the prosecution is *mala fide*, untenable and solely for the purpose of harassing the petitioner.

11. Accordingly, the application is allowed. The entire criminal proceeding arising out of Complaint Case No. 81(C) of



2005 (Tr. No. 3392 of 2008), including the order dated 27.06.2013, by which cognizance has been taken by the Court below, as far as it relates to the petitioner, stand quashed.

(Ahsanuddin Amanullah, J)

P. Kumar

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