

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.40440 of 2013

Arising Out of PS. Case No.-72 Year-2012 Thana- WEST CHAMPARAN COMPLAINT
District- West Champaran

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1. Yogendra Prasad, son of Late Mahadeo Prasad, resident of village and Post-Puraina Gasai, P.S.-Chanpatia, District- West Champaran at Bettiah
 2. Rajan Prasad, son of Yogenra Prasad, resident of Village and Post-Puraina Gasai, P.S.-Chanpatia, District- West Champaran at Bettiah

... .. Petitioner/s

Versus

1. State of Bihar
2. Tokhan Raut, son of Late Yadunandan Raut, resident of village-Bankat Puraina, P.S.-Chanpatia, P.O.-Puraina Gosain, District- West Champaran at Bettiah Pin Code-845449

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr. Atul Chandra, Advocate
For O.P.	:	Mr. Sanjeev Kumar, Advocate
For the State	:	Mr. Shantanu Kumar, A.P.P.

CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH
ORAL JUDGMENT

Date : 28-03-2019

Heard learned counsel for the petitioners and learned
counsel for opposite party no. 2.

2. Nobody appeared on behalf of the State.

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 reliefs :

*“For quashing of the order dated 28.02.2013
passed by the learned Judicial Magistrate, Ist Class,
Bettiah (West Champaran).”*

4. The opposite party no. 2 has filed the complaint
against the petitioner alleging that a piece of land he had got



from one Dilip Kumar, who is the son of petitioner no. 1 and on which he was in possession, was forcibly ploughed by the petitioner and the petitioner no. 1 also fired upon opposite party no. 2 which did not hit him and that the petitioner also assaulted him and took away Rs. 1,000/- from the pocket of the opposite party no. 2.

5. Learned counsel for the petitioner submitted that the whole story is false and concocted. It was submitted that the other son of the petitioner no. 1, namely, Dilip Kumar had sold part of the ancestral property in favour of opposite party no. 2 without there being any formal partition and, thus, to create pressure on the petitioner to accept such sale, a fake case has been filed. Learned counsel submitted that for the same cause of action, the opposite party no. 2 has filed Case No. 20 of 2013 in the court of the Land Reforms Deputy Collector, Bettiah, West Champaran on 12.04.2013. Learned counsel submitted that in the said petition, the relief asked was for declaration of right and possession over the land and also for restraining the petitioners from making any interference in the possession of the opposite party no. 2. Learned counsel submitted that a purely civil dispute, for oblique reason has been made a tool by abusing the process of the Court. It was submitted that the allegation of



assault and taking of Rs. 1,000/- and firing is cosmetic so as to give the whole incident a criminal picture. It was submitted that it is unbelievable that if a gun is put on the chest of somebody and fired, it would miss, as has been alleged in the complaint petition.

6. Learned counsel for the opposite party no. 2 submitted that the petitioners were forcibly trying to plough the land belonging to the opposite party no. 2 and had committed the offence. However, on a query of the Court as to how, when a gun was pointed and kept close to the opposite party no.2, on firing how it missed, there was no answer. On a further query of the Court as to there being no medical report regarding any injury, which indicates that no such incident took place, learned counsel again had no answer.

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. From the background of the facts placed before the Court, it appears that the contention of learned counsel for the petitioners that a purely false criminal case has been instituted only to put pressure on the petitioners not to contest the sale made by another son of the petitioner no. 1 in favour of opposite



party no. 2, is correct. Thus, in the present case, the Court finds that the criminal prosecution is for oblique reasons and for settling a civil dispute.

9. The Hon'ble Supreme Court in the case of **State of Haryana Vs. Bhajan Lal** reported as **2019 (1) PLJR (SC) 215** has enumerated categories under which the Court should 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 formulate 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.”

10. The present case, in the opinion of the Court is covered under category-7 of the aforesaid decision in the case of **Bhajan Lal** (supra) at paragraph-102.

11. Similarly, the Hon’ble Supreme Court in the case of **Indian Oil Corporation Vs. NEPC India Limited** reported as **2006(6) Supreme Court Cases 736**, at paragraph-13, has observed as under :

“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.....”

12. Moreover, the Supreme Court in **State of Karnataka Vs. L. Muniswamy and others**, 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.....”

13. In view of the aforesaid, the Court finds that the prosecution is *mala fide*, untenable and solely for the purposes of harassing the petitioners.

14. Accordingly, the application is allowed. The entire criminal proceeding arising out of Complaint Case No. 72C of 2012, including the order dated 28.02.2013 by which cognizance has been taken by the court below at Bettiah, stands quashed.

(Ahsanuddin Amanullah, J)

Nasimul/-

AFR/NAFR	NAFR
CAV DATE	N/A
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