

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No. 19660 of 2013

Arising Out of Complaint Case No.-826 Year-2011 Thana- KATIHAR COMPLAINT CASE
District- Katihar

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1. Md. Jamal Son of Late Islam Resident of Village- Parteli, Police Station- Katihar Muffasil, District- Katihar.
 2. Md. Nazir Haider Son of Late Hafizur Rahman, Resident of Choudhary Mohalla, Police Station- Katihar Town, District- Katihar. (Deleted vide order dated 28.09.2016).

... .. Petitioner/s

Versus

1. The State of Bihar.
2. Most. Barsatni Wife of Late Zahur, Resident of Mohalla- Rojdpur, Police Station- Katihar Town, District- Katihar.

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr. Bimal Kumar and Ms. Maruti Kumari, Advocates
For the Opposite Party/s	:	None
For the State	:	Mr. Jharkhandi Upadhyay, A.P.P.

**CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN
AMANULLAH**

ORAL JUDGMENT

Date : 24-01-2019

Heard learned counsel for the petitioner no. 1, as the application is restricted to him in view of the death of petitioner no. 2. who has been deleted and learned A.P.P. for the State.

2. However, despite service of notice and appearance of learned counsel for the Opposite Party No. 2 and his name also appearing in the cause list, nobody appeared when the case was taken up and heard.

3. The allegation against the petitioner and six others is that they executed an agreement for 2 Khatas of land in favour of



Opposite Party No. 2 (Complainant) in lieu of her land measuring 7 decimals and 4 karies. It is alleged that the agreement by the accused, including the petitioner was made on 30.12.2010 and the Opposite Party No. 2, executed and registered sale deed in favour of the accused on 30.12.2010 itself; but the agreement made by the accused in favour of the Opposite Party No. 2 does not disclose that in addition to such sale of 2 Khatas of her land in favour of the Opposite Party No. 2, they had also agreed to pay Rs. 1,65,000/- and further, that despite the Opposite Party No. 2 asking them to get the sale deed registered in her favour and also pay money, was not heeded to and in fact the accused are alleged to have come to her house and assaulted her and taken away articles including Rs. 5,000/- cash.

4. Learned counsel for the petitioner submitted that from the plain reading of the complaint, it is clear that the dispute is purely civil in nature and only cosmetic addition has been made with regard to assault and looting of articles, including cash, to give it a criminal colour under serious sections. Learned counsel submitted that the sale deed by the Opposite Party No. 2 was made on 30.12.2010 and the agreement was also made on 30.12.2010, pursuant to which the petitioner and others had also executed sale deed of 2 Khatas of land in favour of sons of the Opposite Party



No. 2 on 01.03.2011 itself and she never raised any objection at that time and only as an afterthought, for oblique reasons, the complaint case was filed on 16.04.2011, that is, after more than one and a half months from the date on which the registered sale deed was executed in favour of the sons of the Opposite Party No.

2. Learned counsel submitted that with regard to payment of money, neither was there anything written in the agreement nor even in the sale deed and, thus, if at all the Opposite Party No. 2 has any claim, the only remedy available to her was to move the civil Court of competent jurisdiction, but criminal proceeding is an abuse of the process of the Court.

5. Learned A.P.P. fairly submitted that though the matter appears to relate to civil dispute but allegations are also with regard to assault and looting of articles and cash.

6. 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 tenor and overall reading of the complaint clearly discloses that to settle a civil dispute with regard to any claim of money which the Opposite Party No. 2 may have against the accused, the complaint case has been lodged and allegation with regard to assault, looting of articles and cash appears to only by way of addition for



giving it some criminal colour. Moreover, the Court finds that even in the complaint itself, the Opposite Party No. 2 has written that she was living in her hut on the land at Rojitpur, which was the land which was transferred by the accused in favour of the sons of the Opposite Party No. 2.

7. The Court finds that the present case comes under category 7 of the decision of the Hon'ble Supreme Court in the case of **State of Haryana v. Bhajan Lal** reported as **1992 Supp (1) SCC 335**, the relevant being at paragraph no. 102, where instances in which inherent power under Section 482 of the Code may be used have been enumerated, 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 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.”

8. Further, in the case of **Indian Oil Corpn. v. NEPC**

India Ltd. reported as **(2006) 6 SCC 736**, the Hon’ble Supreme

Court 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.....”

9. Moreover, 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 held 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. In the aforesaid background, the Court finds that the prosecution is *mala fide*, untenable and solely intended to harass the petitioner and allowing the criminal case to proceed would be an abuse of the process of the Court.

11. Accordingly, for securing the ends of justice, the application is allowed. The entire proceeding arising out of Complaint Case No. 826 of 2011, including the order dated



20.04.2012 by which cognizance has been taken under Sections 420/34 of the Indian Penal Code, as far as it relates to the petitioner stand quashed.

12. The lower Court records be returned to the Court concerned forthwith.

(Ahsanuddin Amanullah, J.)

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