

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.18937 of 2013

Arising Out of PS. Case No.-61 Year-2003 Thana- MURLIGANJ District- Madhepura

Deo Kishor Yadav, Son of Late Kamleshwari Yadav, resident of Village-
Deenapatti, Meera Garh, Police Station-Murliganj, District- Madhepura.

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr. Rajesh Kumar Singh, Advocate Mr. Shailendra Kumar Singh, Advocate
For the State	:	Mr. Md. Arif, A.P.P.

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

ORAL JUDGMENT

Date : 04-02-2019

Heard Mr. Rajesh Kumar Singh, along with Mr.
Shailendra Kumar Singh, learned counsel for the petitioner and
Mr. Md. Arif, learned A.P.P. for the State.

2. 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 relief:

*“That this quashing application is
being filed on behalf of the petitioner for
quashing the order dated 08.02.2013, passed by
the learned 1st additional Sessions Judge,
Madhepura, Sri Dr. Ram Lakhan Yadav, passed
in Cr. Revision No. 43/2010, wherein and
whereby the learned Judge has rejected the
Criminal Revision application of the petitioner
and further confirmed the order dated
04.06.2010, passed by the learned C.J.M.,
Madhepura in Murliganj P.S. Case No. 61/2003
(G. R. No. 687/2003) wherein and where under*



the learned C.J.M., Madhepura has taken cognizance against the petitioner and one other namely Rajendra Choudhary under Section 302/120(B)/34 of the I.P.C. and under Section 27 of the Arms Act on the basis of the Supplementary Charge-sheet submitted against them.”

3. The petitioner was not named in the initial F.I.R. of Murliganj P.S. Case No. 61 of 2003. Subsequent thereto, charge-sheet was submitted against other co-accused and trial held leading to their conviction. Thereafter, the informant again made a statement before the police that because the petitioner had filed a petition before the High Court for removal of the deceased from the post of Pramukh, he is also involved in the conspiracy to kill the deceased. Based on such statement, the police submitted charge-sheet against the petitioner also, leading to the Court taking cognizance.

4. Learned counsel for the petitioner submitted that though initially one of the named co-accused had made a reference that the petitioner and another person had given contract for killing the deceased but neither the informant in the fardbeyan nor written statement to the police nor statement under Section 161 of the Code, nor statement under Section 164 of the Code, nor even during trial had ever indicated with regard to any conspiracy or involvement of the petitioner. It was submitted that thereafter,



merely on the basis of one statement of the informant, that too, only indicating that because the petitioner had filed a case before the High Court for removal of the deceased from the post of Pramukh, the charge-sheet submitted after 7 years against him and cognizance taken is totally unwarranted and cannot result in any conviction. It was submitted that the petitioner being active in local politics, such implication after seven years is maliciously *mala fide* with a purpose to harass the petitioner for settling of private and personal grudge. Learned counsel submitted that the present case, thus, is clearly covered under category 7 of the decision of the Hon'ble Supreme Court in **State of Haryana vs. Bhajan Lal** reported as **1992 Supp (1) SCC 335**, wherein paragraph no. 102, it has been held that the Court should exercise its inherent power under Section 482 of the Code, 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.

5. On the last occasion, the Court had granted time to learned A.P.P to verify such stand from the police paper/ case diary. Today, the categorical stand of learned A.P.P. is that the submissions of learned counsel for the petitioner on facts is



corroborated from the official records and further, it was admitted that except for the statement of the informant much belatedly, after the first trial, indicating some sort of conspiracy, there was no other material before the police while submitting charge-sheet.

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. As has rightly been submitted by learned counsel for the petitioner, at five stages, right from lodging of the F.I.R. to the trial conducted, when the informant does not even whisper with regard to any role of the petitioner and suddenly after 7 years such allegation is made and based solely on such allegation/statement of the informant, the police submitting a charge-sheet against the petitioner clearly, in the considered opinion of the Court, cannot be sustained. The Court further finds that learned counsel for the petitioner has rightly relied upon the decision of the Hon'ble Supreme Court in **Bhajan Lal** (supra), especially category 7 of the categories laid down by the Hon'ble Court for interference at paragraph no. 102 of the aforesaid 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 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.”

7. For reasons aforesaid, the application is allowed. The entire criminal proceeding arising out of Murliganj P.S. Case No. 61 of 2003 (G.R. No. 687/2003) including the order dated 08.02.2013 by which cognizance has been taken, as far as it relates to the petitioner, stands quashed.

(Ahsanuddin Amanullah, J)

P. Kumar

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