

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No. 3810 of 2015**

Arising Out of C.R. No.-1571 Year-2012 Thana- DARBHANGA COMPLAINT CASE
District- Darbhanga

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Ram Swarath Sah, Son of Sri Parash Nath Sah, resident of Village- Dashara,
P.S. Mohadinagar, District- Samastipur.

... .. Petitioner/s

Versus

1. The State of Bihar
2. Sri Shailendra Kumar Pandey Son of Sri Upendra Pandey residents of
village- Maro, P.S. Maro, District- Darbhanga.

... .. Opposite Party/s

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Appearance :

For the Petitioner/s	:	Mr. Jitendra Pandey and Mr. Basudeo Pandey, Advocates
For the Opposite Party No. 2	:	Mr. Priyank Samdarshi, Advocate
For the State	:	Mr. Jharkhandi Upadhyay, APP

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

ORAL JUDGMENT

Date : 07-05-2019

Heard learned counsel for petitioner; learned APP for
the State and learned counsel for the opposite party no. 2.

2. The petitioner has moved the Court under Section
482 of the Code of Criminal Procedure, 1973 for the following
relief:

*“That this is an application for quashing
the order dated 19.05.2014 passed by Sri A. Gupta
Judicial Magistrate 1st Class Darbhanga in Misc.
Case No. 216/2012, C.R. 1571/2012 whereby he
has been pleased to take cognizance against the
petitioner of the offence under section 420 of the
Indian Penal Code, when no offence under Section
420 of the Indian Penal code is made out against
the petitioner.”*



3. The allegation made by the opposite party no. 2-complainant, in Complaint Case No. 1571 of 2012 filed by him against the petitioner, who, at the relevant point of time was posted as Junior Engineer, Rural Works Department, Works Division at Darbhanga, is of non-payment for the bricks and rubbish supplied by him for repair of a road under the Rural Works Department.

4. Learned counsel for the petitioner submitted that from the entire reading of complaint, absolutely no criminal offence is made out. It was submitted that the opposite party no. 2 himself admits that the materials were supplied for the repair of road under the Rural Works Department, which is a public road and that after supply of materials, his dues have not been paid. Learned counsel submitted that even if it is accepted that such grievance is correct, it is purely a civil dispute arising out of a commercial transaction for which the opposite party no. 2 either had to move before the Rural Works Department of the State Government or file money suit before the Civil Court of competent jurisdiction. Learned counsel submitted that non-payment of dues arising out of supply has an actionable claim only on the civil side. Learned counsel further submitted that in his deposition before the Court on solemn affirmation, the



opposite party no. 2 himself has admitted that there was no tender for the the materials supplied by him and further that he had no paper in this regard. Learned counsel submitted that the District Mines Officer has also certified that the opposite party no. 2 did not operate a brick kiln and, thus, there cannot be any question of him producing bricks for supply, as claimed.

5. Learned APP submitted that though cognizance has been taken on the basis of materials before the Court, but fairly submitted that the dispute itself is entirely civil in nature.

6. Learned counsel for the opposite party no. 2, who has filed counter affidavit, submitted that the petitioner is being enquired into departmentally and further that the amount meant for road repair has been deposited by the petitioner in his personal account. It was further pointed out that during enquiry it has been found that the road which was repaired contained bricks supplied by the opposite party no. 2.

7. However, on a direct query of the Court to learned counsel for the opposite party no. 2, as to how such facts which may be the subject matter of a departmental enquiry against the petitioner would give a cause of action to the opposite party no. 2, to file a criminal case and with regard to his grievance of non payment for materials supplied by him for repair of a road, by the



Rural Works Department i.e., the Government, his claim would lie to the Government in the Rural Works Department and not against the petitioner in individual capacity, how any criminal offence is made out, learned counsel could not meet the query of the Court.

8. 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, absolutely no criminal offence is made out from the entire averments made in the complaint case, even if the same are accepted at their face value. The dispute is purely civil i.e., with regard to non payment of certain materials which are alleged to have been supplied by the opposite party no. 2, that too, for the purpose of repair of a road, which was not the private road of the petitioner and rather a public road and the work was done by the Rural Works Department of the State Government. This itself is enough to prove that the matter only has a civil aspect and no criminal aspect, for which, the only remedy available to the opposite party no. 2 was either to move departmentally for payment or in a money suit before the Civil Court of competent jurisdiction. Whatever action departmentally the State Government may have initiated against the petitioner has no concern or connection with the present



complaint case and would not give the opposite party no. 2, a cause of action on the criminal side against the petitioner. Further, as the opposite party no. 2 himself has admitted that neither there was any tender nor he possessed any paper with regard to having supplied the bricks or rubbish, coupled with the fact that the District Mines Officer has certified that the opposite party no. 2 did not have licence to operate any brick kiln, in the considered opinion of the Court, even otherwise on merits, the only option available to opposite party no. 2, was to go before the Civil Court and adduce evidence in support of his contention for the purpose of getting any relief.

9. The Hon'ble Supreme Court in **State of Haryana vs. 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 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 categories 1 and 7 of the aforesaid decision in **Bhajan Lal** (*supra*) at paragraph no. 102.

11. Further, the Hon’ble Supreme Court in **State of Karnataka v. L. Muniswamy** reported as (1977) 2 SCC 699, 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.....”

12. In view of the aforesaid, the Court finds that the present case is *mala fide*, filed for oblique reasons and to harass



the petitioner and, thus, clearly an abuse of the process of the Court.

13. Accordingly, the application is allowed. The entire criminal proceeding of Complaint Case No. 1571 of 2012, pending before the Court below at Darbhanga, including the order dated 19.05.2014, by which cognizance has been taken, stands quashed.

(Ahsanuddin Amanullah, J.)

P. Kumar

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