

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No. 3872 of 2015

Arising Out of Complaint Case No.-1134 Year-2014 Thana- GOPALGANJ COMPLAINT
CASE District- Gopalganj

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1. Rishi Pandey Wife of Ishwar Chandra Pandey.
 2. Rameshwar Pandey Son of Late Tilakdhari Pandey. (Since dead)
 3. Durgesh Pandey @ Durgesh Kumar Pandey, Son of Ishwar Chandra Pandey.
 4. Guddu Pandey @ Anupam Kumar Pandey, Son of Ishwar Chandra Pandey.
 5. Ishwar Chandra Pandey, Son of Rameshwar Pandey.
 6. Rama Kant Pandey, Son of Late Tilakdhari Pandey. (Since dead)

All are resident of Village- Rajapur, P.S.- Kateya, District- Gopalganj.

... .. Petitioner/s

Versus

1. The State of Bihar
2. Babuna Pandey, Son of Bachcha Pandey, Resident of Village- Rajapur, P.S.
Kateya, District- Gopalganj.

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr. Ranjeet Kumar Pandey and Mr. Radhey Shyam Kumar, Advocates
For the Opposite Party/s	:	Mr. Dharmveer, Advocate
For the State	:	Mr. Jharkhandi Upadhyay, APP

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

ORAL JUDGMENT

Date : 03-05-2019

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

2. Learned counsel for the petitioners submitted that
during the pendency of the application, petitioners no. 2 and 6
have died.

3. In view thereof, the application with regard to
petitioners no. 2 and 6 having become infructuous, stands
restricted to petitioners no. 1, 3, 4 and 5.



4. The petitioners have moved the Court under Section 482 of the Code of Criminal Procedure, 1973 (hereinafter referred to as the 'Code') for the following relief:

“That instant application is being filed for quashing the order dated 10.11.2014 passed in complaint case no. 1134/2014 (Tr. no. 4325/2014) by Shri A. K. Tripathi, learned Judicial Magistrate Gopalganj whereby and whereunder the Learned Magistrate found prima-facie case and took cognizance for the offence under section 323, 379 and 504 of the I.P.C. against the petitioners.”

5. The allegation in the complaint filed by the opposite party no. 2 against the petitioners is that they had abused, assaulted and taken away Rs. 5,000/- cash from the pocket of the opposite party no. 2 and watch worth Rs. 2,000/-.

6. Learned counsel for the petitioners submitted that the petitioner no. 1 is In-charge Head Mistress of Primary School Rajapur in Block Kateya of Gopalganj District and the petitioner no. 2 is father-in law; petitioners no. 3 and 4 sons; petitioner no. 5 husband and petitioner no. 6 uncle of the husband and, thus, the entire family has been made accused purely with *mala fide* intention. It was submitted that the wife of the opposite party no. 2 had been removed from service as a teacher by the Competent Authority and in this regard the District Education Officer, Gopalganj under Letter No. 604 dated 26.04.2014 had specifically given a direction to various authorities, including the petitioner,



not to accept the joining of the wife of the opposite party no. 2 and also not pay her any honorarium. Learned counsel drew the attention of the Court to a copies of such letters which are on record. It was submitted that the alleged incident is said to have occurred on 30.04.2014, with the allegation that the opposite party no. 2 came to the school where he was assaulted and cash and watch snatched from him. It was submitted that the same is not only absurd but totally unbelievable and patently false for the simple reason that it cannot be accepted that the father-in law, sons, husband and uncle of the husband would be present in school on a working day at 10.30 A.M. Learned counsel submitted that with regard to the allegation of the petitioner having got employment on the basis of forged documents, the same is also totally false as would be clear from the communication of the District Education Officer, copies of which are on record, to indicate that the certificates have been verified and found to be genuine.

7. Learned APP fairly submitted that the present case appears to be totally unbelievable and untrue.

8. Learned counsel for the opposite party no. 2 was not in a position to controvert such submissions of learned counsel of the petitioners.



9. 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.

10. As has rightly been submitted by learned counsel for the petitioners, the very presence of petitioners no. 2 to 6 in the school in question is highly improbable as they being the family members of the petitioner no. 1, who was the In-charge Head Mistress, cannot be believed or expected to be present in the school on a working day at 10.30 AM. Moreover, such relatives of the petitioner no. 1, who have no connection or dispute with the opposite party no. 2, cannot be expected to unnecessarily intervene in the matter and would commit the crime as alleged. It is also apparent that the allegation that the opposite party no. 2 was asking for the employment papers with regard to his wife is not fit to be believed as such papers are either available with the opposite party no.2/ his wife or with the District Teachers Employment Unit and, thus, there was no occasion for the opposite party no. 2 to ask for such papers from the petitioner no.1. Further, it appears that there was direct rivalry between the wife of the opposite party no. 2 and the petitioner no. 1 and complaints were made with regard to the petitioner no. 1 also getting employment on forged certificates,



which, upon verification, have been found to be genuine. Thus, the present case clearly has been filed for oblique reasons.

11. In this regard, the Hon'ble Supreme Court in the case of **State of Haryana v. Bhajan Lal** reported as **1992 Supp (1) SCC 335**, has enumerated various categories at paragraph no. 102, where the Court ought to interfere in 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.”

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

13. 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.....”

14. In the aforesaid background, the Court finds that the prosecution is *mala fide*, untenable and solely intended to harass the petitioners and abuse of the process of the Court.

15. Accordingly, the application is allowed. The entire criminal proceeding arising out of Complaint Case No. 1134 of 2014 (Tr. No. 4325 of 2014) pending before the Court below at Gopalganj, including the order dated 10.11.2014, by which cognizance has been taken, stands quashed.

(Ahsanuddin Amanullah, J.)

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