

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.51927 of 2013

Arising Out of PS. Case No.-108 Year-2011 Thana- SAHARSA SADAR District- Saharsa

Arbind Kumar Son Of Late Bhuneshwar Shah R/O Mohalla- North
Krishnapuri, P.S.- Krishnapuri, District- Patna

... .. Petitioner/s

Versus

1. The State of Bihar.
2. Kartik Kumar Kaushal, Son Of Bhola Mahto, Resident Of Village- Laxminia,
P.S.+District- Supaul, at Present- Manas Nagar, hatia Gandhi, P.S. and
District- Saharsa.

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr. Yogesh Chandra Verma, Advocate Mr. Ranjeet Kumar Pandey, Advocate Mr. Ravi Shankar, Advocate
For the State	:	Mr. Nityanand, A.P.P.
For the Opposite Party No. 2	:	Mr. Parmeshwar Mehta, Advocate

CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH

ORAL JUDGMENT

Date : 28-01-2019

Heard learned counsel for the petitioner; learned A.P.P
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 (hereinafter referred to as
the ‘Code’) for the following relief:

*“That instant application is being filed for
quashing the F.I.R. vide Saharsa Sadar P.S.
Case No. 108/2011 dated 13.03.2011
registered under Sections 420/ 120B/ 467/
468/504/34 of the I.P.C.”*



3. The petitioner and six others have been made accused in Complaint Case No. 1909 (C) of 2010 which was sent by the court to the police resulting in lodging of Saharsa Sadar P.S. Case No. 108 of 2011 dated 13.03.2011 under various sections of the Indian Penal Code. The allegation against the petitioner is that he had executed sale deed in favour of the complainant and pursuant thereto the complainant/informant (opposite party no. 2) had got the land mutated in his favour in the Government/concerned official records. It is alleged that later on, the other co-accused Debu Sah had sold the same land in favour of the remaining five co-accused.

4. Learned counsel for the petitioner submitted that from the entire reading of the complaint case, except for a bald statement that the other co-accused Debu Sah had got the sale deed executed in favour of the other co-accused of the land which the petitioner had sold to the opposite party no. 2, no other offence is made out against the petitioner. It was further submitted that in fact the opposite party no. 2 has admitted that pursuant to the sale deed executed by the petitioner in his favour, he had got mutation done in the official records which goes to show that the transaction between the petitioner and the opposite party no. 2 was legal and valid. It was submitted that the other co-accused Debu Sah



executing sale deeds in favour of the other persons will not create liability on the petitioner to explain or be accountable for the same. It was submitted that nowhere in the complaint there is any allegation that the petitioner was also a signatory in any capacity on the alleged sale deeds executed by Debu Sah in favour of the other five co-accused.

5. Learned A.P.P., upon going through the case diary, submitted that the police have also not found in investigation that the petitioner had executed the sale deed in favour of the opposite party no. 2 and further that they have not given any finding that the petitioner was in any way involved or party to the sale deeds executed by Debu Sah in favour of the remaining five co-accused.

6. Learned counsel for the opposite party no. 2 submitted that the petitioner in collusion with Debu Sah had got the sale deed executed in favour of other persons. However, on a direct query of the Court to learned counsel as to what was the basis for such allegation that the petitioner was in any way involved in such alleged sale deeds executed by Debu Sah, learned counsel could not show to the Court any instance or material.

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. From the



plain reading of the complaint/F.I.R., it is clear that no criminal offence is made out against the petitioner, except for a passing reference that the co-accused Debu Sah executed sale deeds in favour of other five co-accused, the petitioner was also involved, without there being any material or description in support thereof, in the opinion of the Court, cannot be a valid ground to justify full-fledged trial against the petitioner in the present case. Moreover, as has been submitted by learned A.P.P., even the police have not found any role of the petitioner with regard to sale deeds in any capacity like witness etc. Thus, the Court finds that the present case is covered under category 1 and 7 of the categories defined by the Hon'ble Supreme Court in the case of **State of Haryana v. Bhajan Lal** reported as **1992 Supplementary (1) Supreme Court Cases 335** where at paragraph no. 102, the Hon'ble Supreme Court has enumerated the categories under which the Court ought to 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 omission 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. For reasons aforesaid, the Court finds that the present case against the petitioner is *mala fide* and only to exert undue pressure and wreak vengeance against him and allowing the criminal proceeding would amount to abuse of the process of the court.

9. Accordingly, the application is allowed. The entire criminal proceeding arising out of Complaint Case No. 1909 (C) of 2010 corresponding to Saharsa Sadar P.S. Case No. 108 of 2011 stand quashed.

(Ahsanuddin Amanullah, J)

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