

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No. 33504 of 2015

Arising Out of Complaint Case No.-1199C Year-2012 Thana- KHAGARIA COMPALINT
CASE District- Khagaria

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1. Chandra Shekhar Pd. Singh @ Chandra Shekhar Singh, Son of Late Kamaladhari Singh.
 2. Sanjay Kumar Sharma @ Chunnu Sharma Son of Bhushan Sharma.
 3. Neeraj Sharma Son of Late Nath Bihari Sharma.
 4. Nirmal Sharma Son of Late Nath Bihari Sharma.
 5. Kuntu Sharma Son of Braj Kishoer Sharma.
All resident of village Chak Husaini P.S. Mansi, District Khagaria.
 6. Shravan Rajak Son of Narayan Rajak.
 7. Rudal Rajak Son of Narayan Rajak.
 8. Narayan Rajak Son of Rupan Rajak.
 9. Biso Rajak Son of Rupan Rajak.
 10. Kiso Rajak Son of Rupan Rajak.
 11. Gopal Rajak Son of Rupan Rajak.
All resident of village Khutia P.S. Mansi District Khagaria.

... .. Petitioner/s

Versus

1. The State of Bihar
2. Birendra Yadav Son of Sri Umesh Yadav, resident of Village Matihani, P.S. Mansi, District Khagaria.

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr. Ajay Kumar Thakur and Mr. Nilesh Kumar, Advocates
For the State	:	Mr. Rana Randhir Singh, A.P.P.

CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN
AMANULLAH

ORAL JUDGMENT

Date : 05-04-2019

Heard learned counsel for the petitioners and learned
A.P.P. for the State.



2. Despite service of notice on opposite party no. 2 and learned counsel entering appearance and name of learned counsel also printed in the cause list, nobody appeared when the case was taken up and heard.

3. The petitioners have 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 16.5.2015 passed by learned Judicial Magistrate, 1st Class, Khagaria in Complaint Case No. 1199C/12 by which the learned Magistrate was pleased to hold that a prima facie case is made out against the petitioner for facing trial for the offences under sections 435, 427, 379 of the Indian Penal Code.”

4. The opposite party no. 2 had initially filed Complaint Case No. 357C of 2010 against the petitioners alleging that they had demanded extortion of Rs. 10,000/- and had forcibly cut and taken away the paddy crops and had also burnt part of the crops and while doing so, they had snatched golden chain from the neck of the opposite party no. 2 worth Rs. 10,000/-, ring worth Rs. 8,000/-, wrist watch worth Rs. 2,500/- and Rs. 5,00/- cash. The same was sent by the Court to the Police, based on which Mansi P.S. Case No. 46 of 2010 was instituted on 03.05.2010. The police, after thorough investigation, submitted final form holding the allegations to be untrue and also recommended for initiating



proceeding under Sections 182 and 211 of the Indian Penal Code. The opposite party no. 2 then filed a Protest-cum-Complaint which was numbered as Complaint Case No. 1199 C of 2012, in which the Court has taken cognizance against the petitioners under Sections 435, 427 and 379 of the Indian Penal Code on 16.05.2015.

5. Learned counsel for the petitioners submitted that the opposite party no. 2 has filed a patently false and frivolous case which is actually mischievous, resulting in unnecessary harassment to the petitioners. It was submitted that in the year 2009, the opposite party no. 2 had filed an application before the Anchal Adhikari for settlement of the lands in question with him showing them to be *Grirmazarua Aam* land. During enquiry, the petitioners/their agnates had objected and finally the Anchal Adhikari, by a reasoned order dated 07.04.2009, held the lands to be *raiyyati* of the petitioners and others and dismissed the claim of the opposite party no. 2. Thereafter, again the opposite party no. 2 filed a petition before the Anchal Adhikari for settlement of part of the same lands which was sent to the local police station for enquiry and the report submitted by the S.H.O., Mansi P.S. to the Anchal Adhikari, Mansi dated 10.06.2009, clearly stated that the lands were *raiyyati* lands of others and the opposite party no. 2 by



changing the boundary of the plots was trying to create disturbance by showing the lands to be non *raiyati* lands, for which action was required to be taken. Learned counsel submitted that once the opposite party no. 2 failed in his design to somehow grab the lands of the petitioners, he has adopted filing of complaint case, which should not be allowed to proceed.

6. Learned A.P.P. very fairly submitted that from the materials on record, it is clear that the allegations in the complaint case with regard to forcible cutting and taking away of paddy crop does not appear to be correct for the lands itself do not belong to the opposite party no. 2.

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.

8. As has rightly been submitted by learned counsel for the petitioners, the overall picture which emerges, based on the records before the Court, it is the opposite party no. 2 who has been relentlessly trying to grab lands belonging to others somehow or the other. The fact that the authorities had twice found the lands in question, to be private *raiyati* lands of the petitioners and others and not of the opposite party no. 2, any allegation with regard to the petitioners and others taking away or



cutting the paddy grown on such lands appears to be highly improbable and in fact, patently false. Even if it is accepted that the petitioners had cut and taken away the paddy, which was grown on their personal private land, no offence, much less any criminal offence, can be made out against them. In fact, rightly the police had submitted final form dated 31.05.2010 and recommended for instituting case against the opposite party no. 2 under Sections 182 and 211 of the Indian Penal Code for making false allegation. Earlier also such finding by the police has been recorded in the communication by the Officer Incharge, Mansi to the Anchal Adhikari, Mansi dated 10.06.2009. Thus, repeatedly efforts were made by the opposite party no. 2 to claim right over the lands in question and findings recorded by the authorities that they are the personal and private lands of the petitioners and others and not that of the opposite party no. 2, leaves no doubt in the mind of the Court that the present case has been instituted only for wreaking vengeance and to harass the petitioners.

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 is required to interfere under 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 category 7 of the aforesaid judgment in **Bhajan Lal** (supra) at paragraph no. 102.

11. Further, 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.....”



12. In the aforesaid background, the Court finds that the present complaint case is *mala fide* and an abuse of the process of the Court and cannot be allowed to continue.

13. Accordingly, the application is allowed. The entire criminal proceeding arising out of Complaint Case No. 1199 C of 2012, including the order dated 16.05.2015, by which cognizance has been taken, stands quashed.

(Ahsanuddin Amanullah, J.)

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