

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.14475 of 2015

Arising Out of PS. Case No.-67 Year-2011 Thana- ROHTAS COMPLAINT CASE District-
Rohtas

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Yadunath Singh Son of Gorakh Singh Village - Ramdhati P.O. Parasaura, P.S.
Sahpur, District - Bhojpur at Ara

... .. Petitioner/s

Versus

1. State of Bihar.
2. Braj Kishore Singh son of Late Ramadhar Singh village - Mohanpur, P.S.
Dinara, District – Rohtas.

... .. Opposite Party/s

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Appearance :

For the Petitioner/s : Mr.Sunil Kumar Singh, Adv.

Mr. Azimuddin, Adv.

For the Opposite Party/s : Mr. Bhanu Pratap Singh, Adv.

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CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY
ORAL JUDGMENT

Date : 24-06-2019

Heard learned counsel for the petitioner and counsel for
the State.

The notice was issued to the opposite party no.2 and the
office has also reported of service of notice upon him but, even
then, the opposite party no.2 has preferred to remain absent.

In this case, the petitioner is challenging the order taking
cognizance dated 20.8.2011 passed by learned Judicial Magistrate,
1st Class cum IIIrd Additional Munsif, Bikramganj, Rohtas under
Section 323, 379, 504/34 of the Indian Penal Code arising out of
Complaint Case No. 67(C)/11/Tr. No. 1220/2015.

The petitioner, at the relevant time, was posted as Circle
Officer, Dinara in the district of Rohtas. A petition was filed by the



Complainant to the Sub-Divisional Officer, Bikramganj on 16.10.1998 for compliance of the order passed by this Court in C.W.J.C. No. 2290 of 1990. Again on 24.3.2009 and 2.2.2011, the Complainant went in the office of Circle Officer and gave petition but, the same was not taken by him rather the Complainant was threatened and abused. The Complainant gave petition against the Circle Officer, Dinara to S.D.O., Bikramganj and, thereafter, the Circle Officer became furious. On 5.2.2011, one Tej Narain Singh came and threatend the Complainant to withdraw the complaint against the Circle Officer.

As per allegation, the Circle Officer, Dinara came to the village on 6.2.2011 on his government vehicle with the armed forces and captured the Khata No.26, plot no.366 of 12 ½ decimal of land in Mouza Mahenpur and also a Baire tree situated on the said land, was cut down by Tej Narain Singh, Harendra Singh, Sarvadeo Singh and Munna Singh, when the Complainant opposed then the petitioner Circle Officer (present petitioner) abused and threatened the Complainant and snatched the wrist watch of Rs. 1,000/- and other accused persons took away Rs. 5,000/- from his pocket, this incident was witnessed by several persons. This incident took place on account of the Complainant had declined to



give Rs. 30,000/- to the Circle Officer for clearing the encroachment.

As per case of the petitioner, he was posted as a Circle Officer, Dinara Block and remained there during the period of 4.4.2010 to 9.7.2012. At the relevant time, under the Bihar Public Land Encroachment Act, 1956, the Circle Officer was Collector under the Act, was vested with all the power to clear encroachment made on the public land. The Officer-in-Charge, Dinara Police Station on 24.1.2011 informed the Circle Officer, Dinara that the Government is proposing to construct a road in Mohanpur but, the land over which the road was to be constructed was encroached upon and the persons of the locality were opposing construction of road and requested for removal of encroachment from the government land, is clear from the letter dated 24.1.2011 (Annexure-2) of the petition, whereupon, in turn, the petitioner vide letter dated 1.2.2011 requested the Officer-in-Charge to remain present with the armed forces for clearing and removing the encroachment made at Khata No. 15, Khesra No. 291 and Rakaba 0.01. All the villagers were feeling enthusiastic for construction of the road and the villagers themselves removed the obstruction from the government land so that the road could be constructed which is reflected from the letter dated 6.2.2011 and,



accordingly, the petitioner went along with the police force and all the obstructions were cleared. As the petitioner was not intending to remove the encroachment, the present complaint has been filed with malicious intention in order to malign the status of the petitioner by filing a wrong case against him.

Learned counsel for the petitioner submits that the allegation which has been made is of such an absurd hardly to be believed that the petitioner, who was holding the post of Circle Officer, had snatched the money from the pocket of the Informant.

The petitioner was holding the post of Circle Officer, a post of trust and he had gone to remove the encroachment from the government land for construction of road which was not suiting the Complainant, maliciously and in order to teach a lesson to the petitioner, the present complaint case has been lodged, as there cannot be any occasion for misbehaving to the Complainant as there was no previous acquaintance with the Complainant but, he along with police party had gone to discharge the official duty to clear the obstruction. The present proceeding is an abuse of the process of Court and if it is allowed to proceed further, it will be difficult for an officer to discharge the official duty of clearing the obstruction.



Learned counsel for the petitioner submits that this case squarely falls within the parameter of *State of Haryana & Ors. Vs. Ch. Bhajan Lal & Ors.* reported in *AIR 1992 SC 604* where the Hon'ble Apex Court, after discussing all the previous judgments, has given an example in what situation, the Court will interfere with the proceeding. Here in the present case, on the face of it, it appears that the case has been lodged against the petitioner to settle the personal score, with ulterior motive for wreaking vengeance. In the present case, it is absolutely clear that the petitioner was discharging the official duty and he was called upon to clear the obstruction so that the construction of road would go smoothly and for that he requested the Officer-in-Charge to come along with the police party so that if any obstruction is made in clearing the obstruction, they would take proper action. Of-course the Court in the rare of the rarest case will interfere with the order of taking cognizance, for that the parameter has been set out by the Hon'ble Apex Court in what circumstances, the Court would interfere with the order taking cognizance. In the case of Bhajan Lal (supra) the Apex Court has given guideline to exercise the power under Section 482 of the Cr.P.C.

Looking to the nature of allegation of taking out the amount from the pocket of the Complainant, is an absurd



allegation with an intent to frame the petitioner in the present criminal case illegally by filing a complaint petition. It does not stand to reason that when a Circle Officer had gone for clearing obstruction, he is not supposed to take out money from the pocket of civilian. It will be relevant to quote paragraph no.108 of the judgment passed in the case of Bhajan Lal (supra) wherein mentioned to exercise the power under Section 482 of the Cr.P.C.:-

“108. 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.”



The aforesaid judgment itself shows that if the complaint has been filed with an ulterior motive for wreaking vengeance to settle personal score, in such circumstances, it will be in the interest of justice to interfere with the order of cognizance. The allegation made by the Complainant is so absurd, no normal person would believe the story mentioned in the complaint petition.

Even after notice, the opposite party no.2 has not appeared which shows that he has filed the complaint case in the heat of moment and also he does not want to pursue this case any more.

In this view of the matter, the order taking cognizance dated 20.8.2011 passed by learned Judicial Magistrate, 1st Class cum IIIrd Additional Munsif, Bikramganj, Rohtas under Section 323, 379, 504/34 of the Indian Penal Code arising out of Complaint Case No. 67(C)/11/Tr. No. 1220/2015 is quashed.

In the result, this application stands allowed.

(Shivaji Pandey, J)

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AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	02.07.2019
Transmission Date	

