

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No. 4187 of 2015

Arising Out of Complaint Case No.-646C Year-2012 Thana- COMPLAINT CASE District-
Lakhisarai

-
1. Shobha Devi, Wife of Wakil Sah.
 2. Wakil Sah Son of Late Hazari Sah.
Both are resident of Village- Saidpura, P.O. - Ali Nagar, P.S. - Surajgarha,
District - Lakhisarai.

... .. Petitioner/s

Versus

1. The State of Bihar
2. Ranjit Sah Son of Late Hazari Sah, Resident of Village - Saidpura, P.O. - Ali
Nagar, P.S. - Surajgarha, District - Lakhisarai.

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr. Jyoti Ranjan Jha and Mr. Dhananjay Kumar Singh, Advocates
For the Opposite Party/s	:	Mr. Rajnish Kumar, Mr. Vijay Kumar and Mr. Raj Kumar, Advocates
For the State	:	Mr. Jharkhandi Upadhyay, APP

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

ORAL JUDGMENT

Date : 08-05-2019

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

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

*“That the present quashing application is
being filed before this Hon’ble Court on behalf of
above named accused petitioners for quashing the
cognizance order dated 28.02.2014 in complaint
case No. 646c/2012, whereby and where under*



learned Sri Ravindra Kumar Ray, J.M. 1st Class, Lakhisarai has been pleased to take cognizance of the offence Under Sections 406 and 420 of the Indian Penal Code is directed in the following circumstances.”

3. The opposite party no. 2, has filed Complaint Case No. 292C of 2008 on 17.06.2008, against petitioner no. 2 who is his full brother and petitioner no. 1 who is the wife of the petitioner no. 2. The same was sent to the police resulting in institution of Suryagarha PS Case No. 51 of 2009 dated 11.02.2009. Upon investigation, police submitted Final Form/Report No. 198 of 2010 on 30.11.2010, showing it to be a land dispute and not submitting charge sheet against any accused. The opposite party no. 2 then filed Protest-cum-Complaint and the Court below after accepting the Final Form registered the Protest as a separate case being Complaint Case No. 646C of 2012. Cognizance has been taken in the said complaint case by order dated 28.02.2014, which is impugned in the present application.

4. The allegation against the petitioners is that in the land settled with the grandfather of the opposite party no. 2 and the petitioner no. 2, which was coming in the joint possession of the parties and a house was also built on the same, was got allotted in the name of the petitioner no. 1.



5. Learned counsel for the petitioners submitted that the matter is purely civil as the dispute relates to settlement made by the authorities in favour of the petitioner no. 1. Learned counsel submitted that the same would not constitute a criminal offence as even if wrong settlement has been made, the same has been made by the authorities and for which the opposite party no. 2 either had to move before the superior authorities or the Civil Court of competent jurisdiction, but filing the criminal case is totally *mala fide*. Learned counsel submitted that prior to filing of the criminal case, the opposite party no. 2 had already moved before the authorities and had filed Misc. Case (Cancellation of Purcha) No. 37 of 2007 in the Court of the District Magistrate, Lakhisarai against the petitioner no. 1, which was rejected by order dated 22.12.2011. It was submitted that once the opposite party no. 2 had already invoked the correct forum, the criminal case was not maintainable.

6. Learned APP submitted that the Court below has taken cognizance on the basis of materials before it. However, with regard to the nature of the case, he fairly submitted that the same does not disclose any criminal offence and the cause of action is purely civil in nature.



7. Learned counsel for opposite party no. 2 submitted that the petitioners have committed fraud and cheating and rightly the Court has taken cognizance against them. It was submitted that the order passed by the District Magistrate, Lakhisarai is dated 22.12.2011, whereas the criminal case was filed earlier in the year 2008. However, on a query of the Court as to how the same is of any consequence, since the case filed by the opposite party no. 2, before the District Magistrate, Lakhisarai was in the year 2007 itself and the criminal case has been instituted in the year 2008, for the same cause of action, 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.

9. As has rightly been submitted by learned counsel for the petitioners, the dispute with regard to settlement of land in favour of the petitioner no. 1 is a purely civil cause of action for which no criminal case will lie. Further, once the opposite party no. 2 himself had moved before the District Magistrate, Lakhisarai for cancellation of such settlement, filing of the criminal case does show ulterior motive and oblique reasons. The order passed by the District Magistrate, Lakhisarai dated 22.12.2011 in Misc. Case



No. 37 of 2007 filed by the opposite party no. 2, against the petitioner no. 1 with regard to the same order of settlement, reveals that the piece of land settled with the petitioner no. 1 is different to the land which was settled with the grandfather of the petitioner no. 2 and the opposite party no. 2. Thus, there is no scope of any doubt that the matter is purely civil as the dispute is with regard to settlement of land in favour of the petitioner no. 1, that too, by the State authorities. Thus, filing of a criminal case by the opposite party no. 2 much after him having approached the District Magistrate, Lakhisarai in the matter, is clearly an abuse of the process of the Court.

10. 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 various 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.”

11. The present case, in the opinion of the Court, is covered under category 7 of the aforesaid decision in **Bhajan Lal** (*supra*) at paragraph no. 102.

12. 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.....”

13. Similarly, the Hon’ble Supreme Court in **Indian Oil Corpn. v. NEPC India Ltd.** reported as (2006) 6 SCC 736, at paragraph no. 13, has held thus:

“13. Any effort to settle civil disputes and claims, which do not involve any criminal offence, by applying pressure through



criminal prosecution should be deprecated and discouraged.....”

14. In the aforesaid background, the Court finds that the present case has been filed with ulterior motive for the purpose of wreaking vengeance against the petitioners and to harass them.

15. Accordingly, the application is allowed. The entire criminal proceeding arising out of Complaint Case No. 646C/2012, pending before the Court below at Lakhisarai, including the order dated 28.02.2014, by which cognizance has been taken, stands quashed.

(Ahsanuddin Amanullah, J.)

P. Kumar

AFR/NAFR	
U	
T	

