

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No. 6978 of 2015

Arising Out of Complaint Case No.-132 C Year-2013 Thana- WEST CHAMPARAN
COMPLAINT District- West Champaran

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1. Shaukat Ali, Son of Late Sadik Mian.
 2. Firoz Mian Son of Shaukat Ali.
 3. Nasir Alam Son of Shaukat Ali.
 4. Aftab Alam Son of Shaukat Ali.
 5. Shahrukh Hussain Son of Shaukat Ali.
All residents of Village - Gaunaha, P.S. - Gaunaha, District - West Champaran.
 6. Qyum Mian Son of Latif Mian, resident of Village - Semari Dumari, P.S. - Gaunaha, District - West Champaran.
 7. Alim Mian Son of Late Jainul Mian, Resident of Village - Chatiya, P.S.- Malahi, District - East Champaran.

... .. Petitioner/s

Versus

1. The State of Bihar
2. Md. Amir @ Md. Nathu Son of Md. Alam Mian @ Md. Mahmood Alam, resident of Village - Santpur, Pipra, P.S. - Mainatand, District - West Champaran.

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr. Umesh Chandra Verma, Advocate
For the State	:	Mr. Md. Arif, APP

CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN
AMANULLAH

ORAL JUDGMENT

Date : 17-05-2019

Heard learned counsel for the petitioners and learned
APP for the State.

2. Despite service of notice on opposite party no. 2,
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 (hereinafter referred to as the 'Code') for the following relief:

“That this is an application for quashing the order dated 28.05.2014 passed by Sri P. K. Shukla, the learned Judicial Magistrate, 1st Class, Bettiah, West Champaran, in Trial No. 3099 of 2014 arising out of Complaint Case No. 132-C of 2013, whereby and whereunder the petitioners were summoned to face trial for the offences under section 379 of the Indian Penal Code (IPC).”

4. The opposite party no. 2 had filed Complaint Case No. 132(C) of 2013 against the petitioners alleging that they were armed with countrymade pistol, knives, *dabiya* and iron rod which was used to intimidate the opposite party no. 2 and his father and on such threat, Rs. 2,500/- in cash, mobile worth Rs. 4,600/-, cash Rs. 1,300/- wrist watch worth Rs. 1,100/- and bag containing ornaments and clothes worth Rs. 75,000/- was taken away by the accused. It was further alleged that while retreating the petitioner no. 3 gave threatening and opened fire.

5. Learned counsel for the petitioners submitted that the present case is a classic example of misuse and abuse of the process of the Court. It was submitted that the complaint also suffers from suppression of material facts which exposes the *mala fide* behind filing of such complaint. It was submitted that the opposite party no. 2 is the son-in-law of the petitioner no. 1 and



the daughter of the petitioner no. 1 had earlier filed Complaint Case No. 1854-C of 2012 on 08.08.2012 against the opposite party no. 2 and his family members under Sections 323, 498A, 504 of the Indian Penal Code and 3/4 of the Dowry Prohibition Act. It was submitted that in the said case, after enquiry, summons have been issued against the accused. Learned counsel submitted that as a counter blast to the said case, the present complaint case has been filed on 11.1.2013. Learned counsel submitted that the *mala fide* intention on the part of the opposite party no. 2 would be exposed by the fact of him being the son-in-law of the petitioner no. 1, being married to his daughter, has not even been whispered in the entire complaint case, and, thus, the opposite party no. 2 has tried to play smart even with the Court by suppressing his close relationship with the accused as also the fact that much prior to filing of the present case, he and his family members were already accused in a complaint case filed by his wife i.e., the daughter of petitioner no. 1. Learned counsel submitted that the story as narrated in the complaint, of the accused pointing knives on the abdomen, pistol at the head and *dabiya* at the neck is not only unbelievable but actually comical. It was submitted that such allegation is only for the purpose of sensationalising and dramatizing an occurrence which never took place. Learned counsel submitted that even otherwise, when the



opposite party no. 2 and his family members, including his father, were accused in the complaint case filed by the daughter of the petitioner no. 1, much prior to the complaint case, there could have been absolutely no occasion for them to commit such crime knowing fully well that they would be identified and also prosecuted. Learned counsel submitted that by such suppression of vital fact on the part of the opposite party no. 2, he has not come to the Court with clean hands. It was submitted that the basic requirement of any person approaching any Court of law is to approach the forum with clean hands after placing all facts which are known to him and the present fact of being so closely related to the accused being in the knowledge of the opposite party no. 2 and not even being indicated in the entire complaint case, clearly shows that he has not approached the Court with clean hands and on this ground alone, the present application deserves to be allowed and action against the opposite party no. 2 is also required for such misconduct. It was submitted that in the aforesaid background, the complaint case filed by the opposite party no. 2 is clearly an abuse of the process of the Court.

6. Learned APP fairly submitted that in view of the facts brought on record in the application and as noticed by the Court, the present case appears to be totally without any iota of truthfulness.



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. At this juncture, the Court deems it worthwhile to quote paragraphs no. 23 to 26 of the judgment passed in **Ashutosh Mukherjee v. The State of Bihar [Cr. Misc. No. 47012 of 2014, judgment dated 18-04-2019]**, which read as under:

“23. In **Jitendra Raghuvanshi v. Babita Raghuvanshi** reported as (2013) 4 SCC 58, the Hon’ble Supreme Court in paragraph no. 14 opined:

“14. The inherent powers of the High Court under Section 482 of the Code are wide and unfettered...”
(emphasis supplied)

24. In **Parbatbhai Aahir v. State of Gujarat** reported as (2017) 9 SCC 641, the Hon’ble Supreme Court, at paragraphs no. 11, 16.1 and 16.4 held:

“11. Section 482 is prefaced with an overriding provision. The statute saves the inherent power of the High Court, as a superior court, to make such orders as are necessary (i) to prevent an abuse of the process of any court; or (ii) otherwise to secure the ends of justice...”

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16.1 Section 482 preserves the inherent powers of the High Court to prevent an abuse of the process of any court or to secure the ends of justice. The provision does not confer new powers. It only recognises and preserves powers which inhere in the High Court.



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16.4. While the inherent power of the High Court has a wide ambit and plenitude it has to be exercised (i) to secure the ends of justice, or (ii) to prevent an abuse of the process of any court.” (emphasis supplied)

25. It would be pertinent to point out observations of this Court in **Rupesh Kumar v. The State of Bihar** [Cr. Misc. No. 30470 of 2016, order dated 21.02.2019] at paragraphs no. 9 and 15:

“9. From the aforesaid, it is abundantly clear that this Court has an inherent duty to ensure that whenever it comes across materials which justify a particular course of action, it should not shy away from discharging its constitutional obligations ...

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15... Moreover, every Court of extraordinary jurisdiction, more so a Constitutional Court, like the High Court, has an inherent original power vested in it, where, for securing the ends of justice, certain exercise of power, if required, may be resorted to. Such extraordinary power cannot be curtailed, except that it be invoked in necessary circumstances.”
(emphasis supplied)

26. The High Court, being a Constitutional Court, retains enormous and inherent powers to act in the interest of justice. Suffice it would, to state that any limitation whatsoever in exercise of such power, would be self-imposed, based on the Court's discretion, having due regard to the peculiar facts and circumstances of the case. Under Section 482 of the Code, the High Court only exercises the extraordinary powers it possesses by virtue of the fact that it is a High Court. Section 482 of the Code begins with a non-obstante clause and, as



such, the High Court's interminable jurisdiction cannot be fettered or whittled down."

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 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.”

10. The present case, in the opinion of the Court, is covered under categories 5 and 7 of the aforesaid decision in **Bhajan Lal** (*supra*) at paragraph no. 102.

11. Similarly, 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 follows:

“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 totally malicious, filed with *mala fide* intention, for wreaking vengeance and to harass the petitioners and, thus, is an abuse of the process of the Court.

13. Accordingly, the application is allowed. The entire criminal proceeding relating to Complaint Case No. 132(C) of 2013, including the order dated 28.05.2014, by which cognizance has been taken and summons issued to the petitioners by the Court below at Bettiah in the district of West Champaran, stands quashed.

(Ahsanuddin Amanullah, J.)

P. Kumar

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