

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.737 of 2017

Arising Out of PS. Case No.-177 Year-2013 Thana- FORBESGANJ District- Araria

1. Shashi Nath Mishra and Anr son of Sri Dharmnath Mishra
2. Vishal Kumar Mishra @ Vishal Mishra son of Late Jai Nath Mishra
Both are residents of Village - Bhadreshwar Ward No. 3, P.S. - Jagbani,
District - Araria.

... .. Petitioner/s

Versus

The State Of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr. Ajay Kumar Thakur, Adv. Mr. Nilesh Kumar, Adv. Mrs. Sweta Kumari, Adv.
For the State	:	Mr. Parmeshwar Mehta, APP

CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI
ORAL ORDER

3 24-01-2019 Petitioner, Shashi Nath Mishra who happens to be the uncle and Bishal Kumar Mishra @ Vishal Mishra who happens to be the nephew have challenged the order dated 05.11.2015/06.11.2015 passed by the CJM, Araria in connection with Forbesganj P.S. Case No.177 of 2013 whereby and whereunder these two petitioners have been summoned to face trial on the basis of supplementary charge sheet for an offence punishable under Sections 341, 323, 324, 307, 326, 504/34 of the IPC.

Relevant documents have been annexed under different annexures wherefrom, it is evident that Gyan Mishra, informant of this case happens to be son-in-law of Shashi Nath Mishra, petitioner no.1 and on account of causing dowry death,



aforesaid Gyan Mishra along with his father and others are facing trial for an offence punishable under Section 304B IPC along with other allied sections under Rail Jogbani P.S. Case No.9/2011. It is further evident that after long interval, the aforesaid Gyan Mishra filed Complaint Petition No.1085/2012 against the petitioner no.1 and his wife (father-in-law, mother-in-law) wherein cognizance was taken for an offence punishable under Section 306, 313, 120 of the IPC and the same was challenged at the end of the petitioner no.1 and his wife Renu Mishra under Cr. Misc. No.23104/2013 and the same was allowed vide order dated 19.09.2016 (Annexure-8).

In the background of aforesaid admitted position, the learned counsel for the petitioners has submitted that they are resident of different place. They are sailing with the sessions trial against the informant and his family members. Because of the fact that informant Gyan Mishra developed some sort of animosity with his neighbour, with whom he indulged in criminal activity whereupon, instant case, bearing Forbesganj P.S. Case No.177/2017 has been registered at the end of Gyan Mishra while Munni Devi wife of Vikram Mandal filed complaint case no.1820/2013 though, belatedly whereupon Forbesganj P.S. Case no.249/2013 has been registered in



accordance with direction given by the learned CJM as provided under Section 156(3) of the Cr.P.C. It has further been submitted that petitioners have got nothing to say with regard to the occurrence rather they are confined to their interest only and for that, submitted that from the different annexures 6,7 and 8 it has become crystal clear with regard to inter-se relationship, with regard to prosecution of informant and his family members under dowry death, unsuccessful attempt at the end of the informant to drag the petitioners at an earlier occasion which was quashed by the High Court (Annexure-8) and so, their involvement in the present case happens to be with such ulterior motive only to coerce so that they should give up sailing of the prosecution of dowry death. Apart from this, it has also been submitted that petitioner no.2, Vishal Kumar Mishra who is nephew of petitioner no.1 and happens to be witness in connection with dowry death case was earlier threatened whereupon Jogbani P.S. Case No.29/2012 has been registered at his end. In the facts and circumstances, the present prosecution of the petitioners happens to be intentional, malafide and with ulterior motive in order to forbid them to care the prosecution of dowry death.

The learned Additional P.P. submitted that at the present moment the court has to see only prima facie material,



which the court has seen whereupon petitioners have been summoned to face trial. The defence of the petitioners could not be tested at the present moment rather the same happens to be the subject matter of trial.

The criteria for quashing of the prosecution has been classified in **State of Hariyana & Ors. Versus Bhajan Lal & Ors** reported in *AIR 1992 SC 604* wherein the same has been elaborated in following way:

“(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, on 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 grounds for proceedings 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 proceedings 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 malafide 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.”

More or less, the same view is prevailing. Recently in **Vineet Kumar & Ors. vs. State of Uttar Pradesh & Anr.** reported in (2017) 13 SCC 369 the same has been ealborately considered which has been quoted in **Kartik Chandra Majee @ Kartik Chand Majee & Ors.** reported in (2018) 13 SCC 747, wherein it has been held:

“9. We have an occasion to consider the ambit and scope of power of the High Court under **Section 482 Cr.P.C** for quashing a criminal proceeding in Criminal Appeal No. 577 of 2017: **Vineet Kumar v. State of U.P** decided on 31.03.2017 It is useful to refer to paras 20, 21 and 39 of the above judgment where following was stated:—

“22. Before we enter into the facts of the present case it is necessary to consider the ambit and scope



of jurisdiction under **Section 482 Cr.P.C** vested in the High Court. **Section 482 Cr.P.C** saves the inherent power of the High Court to make such orders as may be necessary to give effect to any order under this Code, or to prevent abuse of the process of any Court or otherwise to secure the ends of justice.

23. This Court time and again has examined scope of jurisdiction of High Court under **Section 482 Cr.P.C** and laid down several principles which govern the exercise of jurisdiction of High Court under **Section 482 Cr.P.C**. A three-Judge Bench of this Court in [State of Karnataka v. L. Muniswamy](#), (1977) 2 SCC 699, held that 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. In paragraph 7 of the judgment following has been stated:

“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 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. The ends of justice are higher than the ends of mere law though justice has got to be administered according to laws made by the legislature. The compelling necessity for making these observations is that without a proper



realisation of the object and purpose of the provision which seeks to save the inherent powers of the High Court to do justice, between the State and its subjects, it would be impossible to appreciate the width and contours of that salient jurisdiction.”

41. Inherent power given to the High Court under **Section 482 Cr.P.C** is with the purpose and object of advancement of justice. In case solemn process of Court is sought to be abused by a person with some oblique motive, the Court has to thwart the attempt at the very threshold. The Court cannot permit a prosecution to go on if the case falls in one of the Categories as illustratively enumerated by this Court in [State of Haryana v. Bhajan Lal](#). Judicial process is a solemn proceeding which cannot be allowed to be converted into an instrument of operation or harassment. When there are material to indicate that a criminal proceeding is manifestly attended with mala fide and proceeding is maliciously instituted with an ulterior motive, the High Court will not hesitate in exercise of its jurisdiction under **Section 482 Cr.P.C** to quash the proceeding under Category 7 as enumerated in [State of Haryana v. Bhajan Lal](#), which is to the following effect:

'102. (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.”

Above Category 7 is clearly attracted in the facts of the present case. Although, the High Court ha noted the judgment of the [State of Haryana v. Bhajan Lal](#), but did not advert to the relevant facts of the present case, materials on which Final Report was submitted by the IO. We, thus, are fully satisfied that the present is a fit case where High Court ought to have exercised its jurisdiction under **Section 482 Cr.P.C** and quashed the criminal proceedings.”



From the facts of the case, inter-se relationship gives a clear cut indication with regard to prosecution of these petitioners saturating criteria no.7 of the Bhajan Lal case and consequent thereupon, the order impugned is fit to be quashed and is accordingly, quashed.

Thus, petition is allowed.

(Aditya Kumar Trivedi, J.)

Prakash Narayan

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