

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.1210 of 2017

Arising Out of PS. Case No.-1696 Year-2013 Thana- BHOJPUR COMPLAINT CASE
District- Bhojpur

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1. Umesh Singh Son of late Shiv Pujan Singh Resident of Village-Ichhari, P.S.Ayer, District Bhojpur
 2. Aash Narain Singh Son of Late Ramayan Singh Resident of Village-Baligaon, P.S. Ayer, District Bhojpur

... .. Petitioner/s

Versus

1. The State of Bihar.
2. Rajendra Singh Yadav Son of Nathuni Singh Resident of Village-Ahurpurva, P.S. Ayer, District Bhojpur

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr.Ravi Ranjan
For the O. P. No.2	:	Mr. Akhileshwar Pd. Singh, Sr. Adv. Mr. Bimal Kumar No.2, Adv. Mr. Surendra Prasad Singh, Adv.
For the State	:	Smt. Gulnar Begam, APP

CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI
ORAL ORDER

4 08-02-2019 Heard learned counsel for the petitioners as well as learned A.P.P along with learned counsel for the O.P. No.2.

2. There was commission of murder of Binod Singh and for that, on the fardbeyan of Gupteshwar Singh, his father Ayer P.S. Case no.11/2013 has been registered wherein, after investigation charge sheet has already been submitted. Subsequently thereof, after elapse of so many months Rajendra Singh Yadav/O.P. no.2/Complainant who happens to be son of Nathuni Singh, brother of Dhanjee Singh, Rajan Singh accused of Ayer P.S. Case No.11/2013 filed Complaint Petition No.1696(c)/2013 whereupon complainant was examined on



S.A., witnesses have also been examined during course of an inquiry under Section 202 Cr.P.C. and then, vide order dated 30.08.1984 took cognizance of an offence punishable under Section 302 of the IPC and for that, the petitioners have been summoned to face trial. Subsequently thereof, petitioners have preferred Cr. Revision no.209/2014 against the order of cognizance and the same has been dismissed vide order dated 02.08.2016 from the Third Additional Sessions Judge, Bhojpur at Ara whereupon instant petition has been filed with a prayer to set aside the successive orders.

3. In State of **State of Hariyana & Ors. Versus Bhajan Lal & Ors** reported in *AIR 1992 SC 604* the following criteries have been laid down by the Hon'ble Apex Court attracting interference while exercising power under Section 482 of the Cr.P.C. and for better appreciation the same is quoted below:

“(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.”

4. Now coming to the controversial issue, after going through the complaint petition, it is evident that it happens to be a complete narration of the event followed during course of investigation by the I.O. relating to Ayer P.S. Case No.11/2013. Some sort of aspersion has also been made against the CJM as, he had allowed police remand of the father, brothers of the complainant. The complainant also tried to expose, activities of



the I.O. at the instance of the then Superintendent of Police, M.R. Nayak in getting signature of the brothers, father of the complainant over blank paper in order to save Shri Bhagwan Singh, Ex-minister. It has also been disclosed that the Umesh Singh (petitioner) taking assistance of his own men got the deceased Binod Singh murdered and then, flashed a false story whereunder father, brother of the complainant along with Shri Bhagwan Singh has been shown to be responsible for causing death of the deceased Binod Singh. It has also been disclosed that the witnesses have seen Umesh Singh as well as Ash Narain Singh to be the assailant of the deceased in assistance with their henchmen.

5. Learned counsel for the petitioners has submitted that from plain reading of the complaint petition along with S.A. as well as statement of the witnesses, it is evident that the same has been flashed in preplanned manner in order to make out a defence case after having the father, brother of the O.P. No.2 under custody relating to Ayer P.S. Case no.11/2013. Furthermore, the contents thereof, depict each and every step in such manner as if O.P. No.2 to be an eyewitness to occurrence along with other though not to be as, had there been then, in that circumstance, the matter would have been reported to the



learned CJM during course of production of father and brother of complainant. It has also been argued that though the police officials have not been summoned but the narration, as flashed clearly indicate that in order to save their skin maliciously filed this case after long delay without any explanation. It has also been submitted that though for cognizable offence there happens to be no barrier of time limit to institute a case, but that has to be seen in the background of over all situation.

6. It has further been submitted that version and counter version of an occurrence is permissible but, the activity adopted by the I.O. during course of investigation under the garb of judicial order goes beyond the purview of the prosecution at the end of an individual whereupon, the cumulative did not justify the order of the cognizance as well as revisional order.

7. The learned counsel for the O.P. No.2 has submitted that there happens to be no fault at the end of O.P. No.2 in filing instant prosecution, and in likewise manner, there happens to be no illegality in the successive order because of the fact that at the time of taking of cognizance, the court has to see only a prima facie case. From the order dated 30.08.2014 passed by the learned lower court, it is apparent that the learned lower



court had found prima facie case coming out from the statement of the witnesses which has, also been affirmed by the revisional court. Consequent thereupon, the order impugned did not attract interference.

8. Apart from this, it has also been submitted that the satisfaction of a Magistrate could not be substituted by the High Court while exercising power under Section 482 of the Cr.P.C. That being so, the instant petition lacks merit and is accordingly fit to be dismissed. The learned A.P.P endorsed the view.

9. After going through the revisional order, it is evident that at an earlier occasion, Cr. Rev. No.28/2014 was filed against the order of cognizance dated 05.12.2013 which was allowed, remitting the matter to proceed afresh whereupon the order impugned has been passed by the lower court as well as by the revisional court.

10. It is needless to say that taking of cognizable is one event, and for that the court has to see prima facie case, while during consideration of prayer under Section 482 Cr.P.C. the High Court has to see, apart from propriety of the order impugned, the surrounding circumstances, in order to test whether prosecution is upright one.

11. In the pretext of present scenario there is no



controversy over institution of counter case having another version of the occurrence but during appreciation of the same, it has to be seen, whether it is found eclipsed with the ingredients so laid down in Bhajan Lal case (Supra). Now coming to facts of the case being accused in Ayer P.S. Case no.11/2013, there happens to be no controversy that father, brother of complainant have gone judicial custody, then to police custody and again to judicial custody. Neither of them made no complain nor said anything, when they bailed out then, the complainant filed this case after such long delay without any explanation against those who stood as an eye witness in occurrence. That being so, the whole exercise suggest malicious prosecution.

12. That being so, the order impugned suffers from inherent defect, consequent thereupon, is set aside. Petition is allowed.

(Aditya Kumar Trivedi, J.)

Prakash Narayan

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