

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.63523 of 2018**

Arising Out of PS. Case No.-1454 Year-2017 Thana- WEST CHAMPARAN COMPLAINT
District- West Champaran

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Lakshmi Kanta Mohanty Son of late Adwaita Prasad Mohanty R/o Salt Lake
City II, P.S. Bidhannagar, Distt. Kolkata W.B, 700091

... .. Petitioner/s

Versus

1. State Of Bihar and Anr
2. Ranju Kumari Wife of Shri Gopal Thakur R/o Gaislal Chowk Ward No. 10,
Purani Gudri, P.S. Bettiah Town, District- West Champaran.

... .. Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Sandip Kumar,
Mr.Alok Kumar @ Alok Kr Shahi, Advocates.
For the Opposite Party/s : Mr.Sri Chandrasen Prasad Singh, APP

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI
CAV ORDER

9 16-04-2019 Asking for quashing of the order dated 10.05.2018

passed by CJM, West Champaran at Bettiah in complaint case
no. 1454/2017 whereby and whereunder, petitioner along with
others has been summoned to face trial for an offence
punishable under Section 406, 323, 504/34 of the IPC, instant
petition has been preferred.

2. OP No.2/Complainant filed a complaint petition
1454/2017 on 02.08.2017 showing the date of occurrence as
25.07.2017 at about 11.30 AM against the Branch Manager,
SBI, Surveyor, Regional Manager, Commercial Claim of the
SBI, Regional Manager, SBI, General Insurance Company
divulging the fact that she had taken loan from SBI, Bazar



Branch to the tune of Rs. 9,50,000/- under self employment scheme whereupon, she has opened Ranju Readymade Garments, at her house. It has been insured under SBI General Insurance Scheme which happens to be sister concern of the SBI. On account of electrical short-circuit, the shop gutted on 08.05.2015 as a result of which, cloth, apparel, ornaments, precious stones got burnt causing loss to the tune of Rs. 11,70,000/-. Accordingly, police was informed. FIR was registered. Complainant was made for claim before the SBI General Insurance Company and since thereafter, although, they assured but upto now, they have not allowed claim. She has also disclosed her Policy No. as 2867816 as well as Complaint No.221607. Being frustrated over conduct of the accused persons, she served advocate notice on 07.07.2017 over local Bank Manager, whereupon, Branch Manager called upon her on 25.07.2017 where she had gone along with her husband. She had further disclosed that all the accused persons were sitting since before. They offered chair to the complainant and her husband and then, the Branch Manager asked for Rs. 2 Lakhs as bribe. On protest, all the accused persons abused and further threatened that her claim will not be allowed unless payment is made. They have also thrashed the complainant as well as her



husband and ousted them from the chamber.

3. The learned CJM kept the complaint under personal file for holding an enquiry under Section 202 CrPC and concluding the same, by the order impugned, summoned the petitioner and others, hence this petition.

4. It has been submitted on behalf of the petitioner that none of the Sections whereunder cognizance has been taken, is made out against the petitioner because of the fact that there was no entrustment specially in favour of petitioner, in likewise manner, is not supported from the S.A. as well as statement of the witnesses. Apart from this, from the column of the accused persons shown in the complaint petitioner's place of posting Kolkatan is found admitted and further, his presence at the concerned station would have been properly shown because of the fact that being at such a high rank, his presence was not at all expected at that very place nor, he had visited in or around the alleged date of occurrence within Bihar province what to talk about the place of occurrence. Furthermore, it has also been submitted that out and out the allegation suggest it as a malicious one as a pressurized tactics to coerce the officials to pass unjustified claim of OP No.2. It has further been submitted that reasonable claim has already



been allowed which the OP No.2 is not willing to accept, on the other hand, took a twist by filing complaint case.

5. The real fact is that OP No.2/Complainant, under ill design to digest the loan amounts, got the activity done and then claimed for total reimbursement which has been directed by, the Surveyor who visited the place, inspected the same, asked for relevant receipts as supportive document in order to properly assess the storage of the apparels, clothes appertaining to such a huge amount whereunder she failed and then, after having report, her claim was allowed but, not as per her expectations, so in order to coerce as well as in revengeful manner got his case filed against top to bottom.

6. Apart from this, it has also been submitted that non approval of claim amount as her desirability of the OP/2 is the main crux which, is found duly redressable under Consumer Protection Act. That being so, the complaint would not survive, consequent thereupon, the order impugned is non sustainable in the eye of law and is accordingly, fit to be set aside.

7. Learned APP as well as learned counsel representing OP No.2 while regressing the points having been at the end of the petitioner, have submitted that at the present stage, only prima facie case has to be seen, which is found



properly manifest from the order impugned. Hence, instant petition loses its relevancy. It has also been submitted that from Annexure-2, it is evident that the availability of goods at the store has properly been attested by the State Bank of India, found worth of Rs. 7,32,750/- which could have more than prima facie evidence, but with a dishonest intention, to coerce the OP No.2 to pay a bribe of Rs. 2 Lacs which the OP No.2 declined, treated in a manner as disclosed, warranting criminal prosecution. Hence, petition is fit to be dismissed.

8. Now-a-days, the mode of litigation has changed. Because of the fact that civil litigations remain pending for years together, the orders of Consumer Court, in majority of the cases, are found toothless irrespective of having relevant provisions and also took him for its final adjudication whereupon, parties invented short cut method by launching a criminal proceeding and for that, each and every activity even having no concerned are brought under ambit of the criminal prosecution. In some case, out of revenge, malicious criminal prosecution is being launched, in some cases with ulterior motive and that happens to be reason behind that in spite of acknowledging the settled principle of law that at the stage of performance of Section 190 CrPC, only prima facie case has to



be seen and even acknowledging that the order satisfies the ingredients, the whole prosecution including order so passed under Section 190 CrPC came under the scrutiny and, to identify the same, criterion have been laid down and which, till today commands the field. For better appreciation, those criterion are quoted hereinbelow which has been laid down in the case of ***State of Hariyana & Ors. Versus Bhajan Lal & Ors*** as reported in ***AIR 1992 SC 604***, Para-102:-

“(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.”

9. The commercial transaction invariably not even



attracting the slightest fragrance of the criminal activity, are twisted, modelled, crafted and brought under criminal prosecution though in some cases may justify which also came to subject of adjudication by the Hon'ble Apex Court in ***Indian Oil Corpn. v. NEPC India Ltd*** as reported in ***(2006) 6 SCC 736*** wherein it has been held as follows:-

“12. The principles relating to exercise of jurisdiction under [Section 482](#) of the Code of Criminal Procedure to quash complaints and criminal proceedings have been stated and reiterated by this Court in several decisions. To mention a few - [Madhavrao Jiwaji Rao Scindia v. Sambhajirao Chandojirao Angre](#) [1988 (1) SCC 692], [State of Haryana vs. Bhajanlal](#) [1992 Supp (1) SCC 335], [Rupan Deol Bajaj vs. Kanwar Pal Singh Gill](#) [1995 (6) SCC 194], [Central Bureau of Investigation v. Duncans Agro Industries Ltd.](#), [1996 (5) SCC 591], [State of Bihar vs. Rajendra Agrawalla](#) [1996 (8) SCC 164], [Rajesh Bajaj v. State NCT of Delhi](#), [1999 (3) SCC 259], [Medchl Chemicals & Pharma \(P\) Ltd. v. Biological E. Ltd.](#) [2000 (3) SCC 269], [Hridaya Ranjan Prasad Verma v. State of Bihar](#) [2000 (4) SCC 168], [M. Krishnan vs Vijay Kumar](#) [2001 (8) SCC 645], and [Zandu Pharmaceutical Works Ltd. v. Mohd. Sharaful Haque](#) [2005 (1) SCC 122]. The principles, relevant to our purpose are :

(i) A complaint can be quashed where the allegations made in 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 the case alleged against the accused.

For this purpose, the complaint has to be examined as a whole, but without examining the merits of the allegations. Neither a detailed inquiry nor a meticulous analysis of the material nor an assessment of the reliability



or genuineness of the allegations in the complaint, is warranted while examining prayer for quashing of a complaint.

(ii) A complaint may also be quashed where it is a clear abuse of the process of the court, as when the criminal proceeding is found to have been initiated with malafides/malice for wreaking vengeance or to cause harm, or where the allegations are absurd and inherently improbable.

(iii) The power to quash shall not, however, be used to stifle or scuttle a legitimate prosecution. The power should be used sparingly and with abundant caution.

(iv) The complaint is not required to verbatim reproduce the legal ingredients of the offence alleged. If the necessary factual foundation is laid in the complaint, merely on the ground that a few ingredients have not been stated in detail, the proceedings should not be quashed. Quashing of the complaint is warranted only where the complaint is so bereft of even the basic facts which are absolutely necessary for making out the offence.

(v) A given set of facts may make out : (a) purely a civil wrong; or (b) purely a criminal offence; or (c) a civil wrong as also a criminal offence. A commercial transaction or a contractual dispute, apart from furnishing a cause of action for seeking remedy in civil law, may also involve a criminal offence. As the nature and scope of a civil proceedings are different from a criminal proceeding, the mere fact that the complaint relates to a commercial transaction or breach of contract, for which a civil remedy is available or has been availed, is not by itself a ground to quash the criminal proceedings. The test is whether the allegations in the complaint disclose a criminal offence or not.



10. Recently, on account of some sort of business transaction asking prosecution under Section 406 CrPC has been subject to adjudication in *Anand Kumar Mohatta v. State (Govt. of NCT of Delhi), Department of Home* as reported in 2019(1) BLJ 128 (SC) wherein the case of *Indian Oil Corpn. v. NEPC India Ltd (supra)* and criterion so laid down under *State of Hariyana & Ors. Versus Bhajan Lal & Ors (supra)* have also been properly dealt with and then it has been held as follows:-

“27. We are of the opinion that the present case falls under the 1st, 3rd and 5th category set out in the para 102 of the judgment in the case of Bhajan Lal (supra). In such a situation, the High Court erred in dismissing the petition of the Appellants filed under Section 482 of Cr.P.C. This was a fit case for the High Court to exercise its inherent power under Section 482 of Cr.P.C. to quash the FIR.

28. It is necessary here to remember the words of this Court in *State of Karnataka v. L. Muniswamy and others (1977) 2 SCC 699* which read 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.....”

28. We find that the prosecution is mala fide, untenable and solely intended to harass the Appellants. We are forfeited in view of the Respondent not having made any attempt to recover the deposit of Rs. One Crore through a civil action.

29. We have, therefore, no hesitation in quashing the FIR and the charge sheet filed against the Appellants. Hence, the FIR No.0139/2014 dated 20.08.2014 and charge sheet dated 03.08.2018 are hereby quashed.

11. In *Himachal Pradesh Cricket Association v. State of Himachal Pradesh* as reported in *2019 (2) BLJ 181 (SC)* wherein the prosecution has been under Prevention of Corruption Act along with other allied offences, subject to consideration and during course thereof, again the relevant citations were taken into consideration concerning the present controversy and then it has been observed as follows:-

46. We are conscious of the scope of powers of the High Court under Section 482 of Cr.P.C. The inherent jurisdiction is to be exercised carefully and with caution and only when exercise is justified by the tests specifically laid down in the Section itself. Further, inherent



power under this provision is not the rule but it is an exception. The exception is applied only when it is brought to the notice of the Court that grave miscarriage of justice would be committed if the trial is allowed to proceed where the accused would be harassed unnecessarily. If the trial is allowed to linger when prima facie it appears to the Court that the trial could likely to be ended in acquittal. It is, for this reason, principle which is laid down by catena of judgments is that the power is to be exercised by the High Court either to prevent abuse of process of any court or otherwise to secure the ends of justice. However, whenever it is found that the case is coming within the four corners of the aforesaid parameters, the powers possessed by the High Court under this provision are very wide. It means that the Court has to undertake the exercise with great caution. However, the High Court is not to be inhibited when the circumstances warrant exercise of such a power to do substantial justice to the parties. This provision has been eloquently discussed in Bhajan Lal's case which has become locus classicus. Principle Nos. (i) and (ii) of Indian Oil Corporation are, therefore, become applicable. The entire subject matter has been revisited in a recent judgment in Vineet Kumar and some of the discussion therein which takes note of earlier judgments is reproduced below:

"26. A three-Judge Bench in State of Karnataka v. M. Devendrappa [State of Karnataka v. M. Devendrappa, (2002)3 SCC 89 : 2002 SCC (Cri) 539] had the occasion to consider the ambit of Section 482 CrPC. By analysing the scope of Section 482 CrPC, this Court laid down that authority of the Court exists for advancement of justice and if any attempt is made to abuse that authority so as to produce injustice the Court has power to prevent abuse. It further held that Court would be justified to quash any proceeding if it finds that initiation/continuance of it amounts to



abuse of the process of court or quashing of these proceedings would otherwise serve the ends of justice. The following was laid down in para 6: (SCC p. 94)

“6. ... All courts, whether civil or criminal possess, in the absence of any express provision, as inherent in their constitution, all such powers as are necessary to do the right and to undo a wrong in course of administration of justice on the principle *quando lex aliquid alicui concedit, concedere videtur et id sine quo res ipsae esse non potest* (when the law gives a person anything it gives him that without which it cannot exist). While exercising powers under the section, the court does not function as a court of appeal or revision. Inherent jurisdiction under the section though wide has to be exercised sparingly, carefully and with caution and only when such exercise is justified by the tests specifically laid down in the section itself. It is to be exercised *ex debito justitiae* to do real and substantial justice for the administration of which alone courts exist. Authority of the court exists for advancement of justice and if any attempt is made to abuse that authority so as to produce injustice, the court has power to prevent abuse. It would be an abuse of process of the court to allow any action which would result in injustice and prevent promotion of justice. In exercise of the powers court would be justified to quash any proceeding if it finds that initiation/continuance of it amounts to abuse of the process of court or quashing of these proceedings would otherwise serve the ends of justice. When no offence is disclosed by the complaint, the court may examine the question of fact. When a complaint is sought to be quashed, it is permissible to look into the materials to assess what the complainant has alleged and whether any offence is made out even if the allegations are accepted in toto.”

27. Further in para 8 the following was stated: (Devendrappa case [State of Karnataka v. M.



Devendrappa, (2002) 3 SCC89 : 2002 SCC (Cri) 539] , SCC p. 95)

“8. ... Judicial process should not be an instrument of oppression, or, needless harassment. Court should be circumspect and judicious in exercising discretion and should take all relevant facts and circumstances into consideration before issuing process, lest it would be an instrument in the hands of a private complainant to unleash vendetta to harass any person needlessly. At the same time the section is not an instrument handed over to an accused to short-circuit a prosecution and bring about its sudden death. The scope of exercise of power under Section 482 of the Code and the categories of cases where the High Court may exercise its power under it relating to cognizable offences to prevent abuse of process of any court or otherwise to secure the ends of justice were set out in some detail by this Court in *State of Haryana v. Bhajan Lal* [*State of Haryana v. Bhajan Lal*, 1992Supp (1) SCC 335 : 1992 SCC (Cri) 426].”

In the instant case, the High Court simply noted those judgments which put a note of caution in exercising the powers under Section 482 Cr.P.C. to quash such proceedings and dismissed the petition with a shallow examination of the case, thereby glossing over the material facts (which are noted hereinabove) and failing to examine that these pertinent aspects were sufficient to demonstrate that no criminal case was made out, particularly when all the concerned officers, who had taken the decision, were let off on the ground that they had not committed any wrong.

12. After having the settled principle at the backdrop, coming to the instant prosecution, after going through the relevant documents, it is evident that the prosecution of the



petitioner appears to be mala fide, malicious with oblique motive, as the presence of petitioner in a way as indicated by the OP No.2 did not inspire authenticity, which the OP No.2 would have at least even in superficial manner. Accordingly, the same is set aside, however, only to the extent of petitioner. Petition is allowed.

(Aditya Kumar Trivedi, J)

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