

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.49188 of 2014

Arising Out of Case No.-372C Year-2014 Thana- MUNGER COMPLAINT CASE District-
Munger

-
1. Swaran Lata Devi Wife of late onkar Mishra Resident of Mohalla - Dalhatta Bazar, P.S - Kotwali, Distt. Munger.
 2. Nirbhay Kumar Mishra Son of Radhakant Mishara Resident of village - Bindwarce, P.S. - Kasim Bazar, Distt-Munger

... .. Petitioner/s

Versus

1. The State Of Bihar
2. Md Afroj Khan Son of Jasim Khan Resident of Mohalla - Nayagawn, Raysar, P.S- Kotwali, distt- Lakhisarai

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Kumar Kamal Nayan, Advocate
For the State : Mr. Md. Arif, APP

CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH
ORAL JUDGMENT

Date : 11-03-2019

Heard learned counsel for the petitioners and learned
A.P.P. for the State.

2. Despite opposite party no. 2 having entered
appearance through learned counsel and name of learned counsel
also printed in the cause list, nobody appeared on his behalf when
the matter was taken up and heard.

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



“That this application is being filed for quashing the order dated 16.07.2014 passed by learned Sri D. N. Bhardwaj, Judicial Magistrate Ist Class, Munger, C.C. No. 372C/2014 by which the learned judicial magistrate has taken cognizance u/s 323, 341, 379 and section 504/34 of I.P.C. against the petitioner’s and other.”

4. The allegation against the petitioners is that they had taken land belonging to the opposite party no. 2 through registered sale deed but the consideration money which was to be paid by them to the opposite party no. 2 within three months from the date of registration, the same has not been done. It was further alleged that when the opposite party no. 2 went to their place to ask for money, Rs. 1200/- cash and watch worth Rs. 1200/- were forcibly taken and he was assaulted with blows and pushed.

5. Learned counsel for the petitioners submitted that the present case has been filed only to exert undue pressure on the petitioners to pay extra money for the land sold by the opposite party no. 2 to them. It was submitted that from the entire complaint case, the only allegation which is made out is that the consideration amount had not been paid to the opposite party no. 2 by the petitioners. Learned counsel submitted that the same cannot be believed since in the complaint itself it is written that in the



recital of the sale deeds the opposite party no. 2 had admitted receiving the money and, thus, there was no occasion for the petitioners to be liable for paying any further amount. Learned counsel submitted that the allegation of snatching of Rs. 1200/- cash and watch worth Rs. 1200/- and of assault is only cosmetic so as to make the allegations more serious and give it a criminal colour.

6. Learned A.P.P. fairly submitted that the matter is a purely civil dispute *moreso*, when in the sale deed the opposite party no. 2 had admitted that he had received the money from the petitioners. With regard to the allegation of snatching of money, watch and assault, it was submitted that the same appears to be only for the purpose of making out a criminal case against the petitioners.

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. The entire complaint case discloses that the real dispute is that the petitioners had not paid the consideration amount to the opposite party no. 2, appears to be completely false for the simple reason that in the complaint itself it is admitted that in the sale deed, the opposite party no. 2 had admitted to have



received the entire consideration amount prior to registration/execution of the sale deed. Thus, there cannot be any justification in law to rely on the statement of the opposite party no. 2 which is contrary to what he admittedly wrote while executing the sale deed in favour of the petitioners. This is one aspect of the matter. The other aspect relates to the allegation of snatching of Rs. 1200/- and watch worth Rs. 1200/- and of assault. In the background of the sequence of events narrated, such allegations appear to be only for the purpose of giving some criminal nature to an otherwise purely civil dispute. Thus, the same appears to be only cosmetic without any authenticity or reliability.

9. The Hon'ble Supreme Court in **State of Haryana v. Bhajan Lal** reported as **1992 Supplementary (1) Supreme Court Cases 335**, at paragraph no. 102, has enumerated categories where the Court should 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 omission 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 category 7 of the aforesaid judgment in the case of **Bhajan Lal** (supra) at paragraph no. 102.

11. Further, the Hon’ble Supreme Court in **State of Karnataka v. L. Muniswamy** reported as (1977) 2 Supreme Court Cases 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.
.....”*

12. In the aforesaid background, the Court finds that the present case has been filed solely for the purpose of wreaking vengeance and to harass the petitioners.

13. Accordingly, the application is allowed. The entire criminal proceeding arising out of Complaint Case No. 372C of 2014, including the order dated 16.07.2014 by which cognizance has been taken, stand quashed.

(Ahsanuddin Amanullah, J)

Anjani/-

AFR/NAFR	
U	
T	

