

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.48895 of 2014

Arising Out of Case No.-499 Year-2006 Thana- KATIHAR COMPLAINT CASE District-
Katihar

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Nirbhay Kumar Son of Late Binodanand Kumar resident at Railway Quarter
No. 354B, New Colony Sahayak Police Station - Mirchaibari, District -
Katihar.

... .. Petitioner/s

Versus

1. The State Of Bihar
2. Birendra Singh Son of Late Masudan Singh resident of village - New
Colony Quarter No. 428 (A) Katihar, P.S. + District - Katihar.

... .. Opposite Party/s

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Appearance :

For the Petitioner/s	:	Mr. Nagendra Upadhyay, Advocate
For the State	:	Mr. Jharkhandi Upadhyay, APP
For the O.P. No. 2	:	Mr. Bhola Prasad with Mr. Mukesh Kr. Jha, Advocates

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CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH
ORAL JUDGMENT

Date : 02-04-2019

Heard learned counsel for the petitioner; learned A.P.P.
for the State and learned counsel for the opposite party no. 2.

2. The petitioner has 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 application is directed against the
order dated 20.09.2014 passed by the learned
Session Judge Katihar, in Cr. Rev. No. 83 of
2014 by which order he has rejected the
Criminal Revision No. 83 of 2014 by which*



order he has rejected the Criminal Revision No. 83 of 2014 filed by the petitioner against the order dated 28.05.2014 passed by the learned J.M. 1st Class, Sri B.B. Roy in complaint case No. 499/2006 by which he has rejected the petition dated 18.02.2013 filed on behalf of the petitioner for his discharging u/s 245 of Cr. P.C., without considering the material available on the record of the case, with a prayer to quash the aforesaid orders and discharge the petitioner from the Complaint case No. 499/2006 pending in the court of Sri Bipin Bihari Roy J.M. 1st class Katihar.”

3. The allegation against the petitioner and one other person is of attempting to strangulate him and thereafter snatching Rs. 4,200/- from the pocket of the complainant- opposite party no. 2 by the petitioner and against the other co-accused of snatching HMT wrist watch worth Rs. 900/-.

4. Learned counsel for the petitioner submitted that the complaint case is totally false and frivolous and abuse of the process of the Court. It was submitted that the complaint case has been filed on 13.03.2006 in which the date and time of occurrence has been shown as 10.03.2006 at about 9.00 P.M. It was submitted that for the same incident, the petitioner had instituted Katihar Town P.S. Case No. 83 of 2006 on 11.03.2006 in which the opposite party no. 2 along with ten other persons had been made accused. It was submitted that as per the F.I.R. of the petitioner, all the accused persons, including the opposite party no. 2, had



assaulted him brutally with further allegation of taking away of gold chain and also Rs. 10,000/- cash. Learned counsel submitted that the said *fardbeyan* was given to the police at 12:30 A.M. on 11.03.2006 in the Railway Hospital, Katihar where the petitioner was undergoing treatment pursuant to assault by the opposite party no. 2 and his colleagues. Learned counsel submitted that the complaint case in which the date and time of the incident is the same, having been filed after three days, itself raises serious doubts with regard to its authenticity and clearly in the background of the police case filed by the petitioner, the same is a counter blast, to have a defence in the case filed by the petitioner. It was submitted that the petitioner was admitted in the Railway Hospital and, thus, it is obvious that he had suffered injuries, whereas in the case of the petitioner, there is only bald allegation of attempt to strangle and assault, but no averment with regard to any medical treatment or report relating to the same. Learned counsel further submitted that in the complaint, names of the witnesses have been stated who are said to have seen the occurrence. Learned counsel submitted that if the same is true then there is no explanation as to why those persons did not come to rescue of the opposite party no. 2 when the petitioner and another person are accused of attempting to strangle him and of snatching money



and his wrist watch. Learned counsel submitted that the opposite party no. 2 was a member of the earlier Managing Committee of the Co-operative Society and also a member of the new Committee and in the meeting held in the evening of 10.03.2006, there was altercation between the petitioner and the opposite party no. 2 on account of the Committee making a complaint to the authorities and the police with regard to defalcation made by the earlier Society due to which the petitioner had been assaulted by the opposite party no. 2 and his other accomplices.

5. Learned A.P.P. fairly submitted that there were materials before the Court, but on an overall consideration, it appears that the present case is a counter blast to the F.I.R. lodged by the petitioner.

6. Learned counsel for the opposite party no. 2 contended that the Court below, on the basis of materials before it, had taken cognizance and petition filed for discharge rejected, which had been rightly upheld by the Sessions Judge, Katihar in Criminal Revision No. 83 of 2014 by order dated 20.09.2014.

7. At this juncture, on a specific query of the Court to learned counsel that if there were injuries on the opposite party no. 2, why no medical treatment was taken/report submitted, and further as to how such allegation can be accepted to be true for the



reason that the parties being known to each other and returning from the meeting of the Co-operative Society and also there being no explanation as to why the so called witnesses who were more in number compared to the accused had not intervened to save the opposite party no. 2, if the incident did really take place, there was no answer.

8. 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.

9. The story narrated in the complaint appears to be highly improbable in the background of the fact that much prior to instituting the complaint, the petitioner had already filed a police case with regard to the same incident. Further, as has rightly been pointed out by the petitioner, the accused being two in number and the witnesses being more in number, there being no explanation as to why the witnesses did not intervene, if at all the opposite party no. 2 was being strangled or money or wrist watch was being snatched, clearly indicates that no such incident had taken place. At this juncture, it would be relevant to indicate that one witness has stated that he saw a crowd and when he went near, he found the petitioner and co-accused, trying to strangle the opposite party no. 2. This is totally unbelievable as it cannot be accepted



that a crowd would allow two persons to do such a thing. Further, there being no reason given as to why the incident occurred, also shows that the complaint has been filed in a very casual manner. In this connection, the Court would refer to the decision of the Hon'ble Supreme Court in **State of Haryana v. Bhajan Lal** reported as **1992 Supplementary (1) Supreme Court Cases 335**, where, at paragraph no. 102, categories have been defined where the Court ought to 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, falls under category 7 of the aforesaid judgment in **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. Having considered aforesaid, the Court finds that the prosecution is *mala fide*, untenable and solely intended to harass the petitioner.

13. Accordingly, the application is allowed. The entire criminal proceeding arising out of Complaint Case No. 499 of 2006, including the order of cognizance and the order impugned, as far as it relates to the petitioner, stands quashed.

14. The papers received be returned forthwith.

(Ahsanuddin Amanullah, J)

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