

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No. 51799 of 2014

Arising Out of P.S. Case No.-22 Year-2011 Thana- KHUDAGANJ District- Nalanda

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1. Dhirendra Singh, Son of Indradeo Singh.
 2. Jitendra Singh, Son of Indradeo Singh.
 3. Amrendra Singh, Son of Indradeo Singh.
 4. Nagendra Singh, Son of Indradeo Singh.
 5. Amitabh Singh, Son of Indradeo Singh.
 6. Abhishek Singh, Son of Jitendra Singh.
- All Resident of Village - Kewali, P.S. - Khudaganj, District - Nalanda.

... .. Petitioner/s

Versus

1. The State of Bihar
2. Rakesh Kumar, Son of Singhasan Singh, Resident of Village - Kewali, P.S. Khudaganj, District - Nalanda.

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr. Surendra Kishore Thakur and Ms. Priya Kumari, Advocates
For the Opposite Party/s	:	Ms. Usha Rani, Advocate
For the State	:	Mr. Ram Chandra Singh, APP

**CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN
AMANULLAH**

ORAL JUDGMENT

Date : 19-06-2019

Heard learned counsel for the petitioners; learned APP
for the State and learned counsel for the opposite party no. 2.

2. The petitioners have 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 being filed for
quashing of the order dated 26.8.2014 passed by
the Sub-Divisional Judicial Magistrate, Hilsa in
connection with G.R. Case No. 407/2011 arising*



out of Khudaganj P.S. Case No. 22/2011 whereby and where under the learned Court below has rejected the application for discharge without considering that there is no material in the case diary to constitute the offence.”

3. The allegation against the petitioners is of committing dacoity in the house of the informant.

4. Learned counsel for the petitioners submitted that there is land dispute between the parties which is admitted in the FIR itself. It was further submitted that there is no independent witness and it cannot be believed that a next door neighbour would commit dacoity. Learned counsel submitted that there has been no recovery from the petitioners or their house. It was further submitted the police after investigation submitted Final Form and even recommended that the informant be prosecuted under Sections 182 and 211 of the Indian Penal Code. Learned counsel submitted that only on the basis of the statement recorded during investigation by the close relatives and family members of the informant, the Court had taken cognizance and the petition filed by the petitioners for discharge under Section 439 of the Code has also been rejected without even considering any aspect or discussing the merits of the matter. It was submitted that paragraphs no. 3, 6, 7, 8, 10, and 11 of the case diary are either the restatement of the informant or the statement of close relatives



and family members. It was submitted that at paragraphs no. 20, 21 and 22, independent witnesses have stated that the informant family itself was removing the articles from a tempo and when the wife of co-accused Indradeo Singh asked as to where these things were being moved to, the informant and her family members became angry and started abusing them.

5. Learned APP, from the case diary, was not in a position to controvert the submissions made by learned counsel for the petitioners.

6. Learned counsel for the opposite party no. 2 submitted that the informant is a poor lady and the petitioners had committed dacoity. However, on a direct query of the Court as to how such allegation can be believed when the parties are next door neighbours and no independent witness has supported the prosecution story and in fact the police has recommended for prosecution of the informant itself, he was not in a position to make any submissions in this regard.

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 Hon'ble Supreme Court in **State of Haryana vs. Bhajan Lal** reported as **1992 Supp (1) SCC 335**, at paragraph



no. 102 has enumerated categories where the Court is required 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 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, 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.”

9. In the opinion of the Court, the present case is covered under category 7 of the aforesaid judgment in **Bhajan Lal** (*supra*) at paragraph no. 102.

10. Further, the Hon'ble Supreme Court in **State of Karnataka v. L. Muniswamy** reported as (1977) 2 SCC 699, at paragraph no. 7, has observed thus:

“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.....”

11. Moreover, the Court finds that in the FIR itself, it has been stated that there was dispute with regard to passage between the parties. Thus, the Court finds that the present case has been filed with *mala fide* intention to harass the petitioners and letting the same to continue would be an abuse of the process of the Court.

12. For reasons aforesaid, the application is allowed. The entire criminal proceeding arising out of Khudaganj PS Case No. 22 of 2011 (GR No. 407 of 2011), including the order dated 06.10.2012, by which cognizance has been taken as well as the order dated 26.08.2014 by which petition filed under Section 239 of the Code for discharge has been rejected, as far as it relates to the petitioners, stand quashed.

(Ahsanuddin Amanullah, J.)

P. Kumar

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