

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.3633 of 2015

Arising Out of Case No.-252 Year-2013 Thana- SAMASTIPUR COMPLAINT CASE
District- Samastipur

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1. Sharmila Devi, wife of Sri Kanhaya Podar, D/o Sri Ram Balak Podar.
2. Ram Balak Podar, S/o late Rajendra Podar.
3. Akali Devi, w/o Sri Ram Balak Podar
All are resident of village- Mali Nagar, P.S. Chakmehasi, District-
Samastipur.

... .. Petitioner/s

Versus

1. The State Of Bihar
2. Kanhaya Podar, son of late Babu Podar, resident of village- Habaspur, P.S.
Patori, District- Samastipur.

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr. Deepak Kumar Singh, Advocate
For the State	:	Mr. Jharkhandi Upadhyay, APP
For the O.P. No. 2	:	None

CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH
ORAL JUDGMENT

Date : 03-05-2019

Heard learned counsel for the petitioners and learned
APP for the State.

2. Despite service of notice and opposite party no. 2
having entered appearance and name of learned counsel also
printed in the cause list, nobody appeared when the case was taken
up and heard.

3. 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 is an application has been filed against
cognizance order dated 25.04.2013 passed by the*



learned Chief Judicial Magistrate, Samastipur whereby and whereunder the cognizance has been taken under section 147, 323, 379 of I.P.C. against the petitioners in connection with complaint case no. 252/2013 in the court of learned C.J.M., Samastipur.”

4. The opposite party no. 2, who is the husband of petitioner no. 1, has filed Complaint Case No. 252 of 2013 against the petitioners alleging that when he and his family members had gone to worship at a temple, the petitioners surrounded them and assaulted them with fists and slaps and also snatched gold chain and gold earrings worth Rs. 60,000/- each.

5. Learned counsel for the petitioners submitted that petitioner no. 1 had filed Chakmehasi P.S. Case No. 3 of 2013 on 16.01.2013 against the opposite party no. 2 and his family members under Sections 447/341/323/498(A)/494/379/34 of the Indian Penal Code. It was submitted that the present complaint case has been filed as a counter blast on 19.02.2013.

6. Learned APP fairly submitted that from the background of the case the allegations made in the complaint appear to be highly improbable and clearly a counter blast to the earlier FIR filed by petitioner no. 1.

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. In the background of the fact that much prior to filing of the present complaint case, the petitioner no. 1, who is the wife of opposite party no. 2, had filed an FIR against the opposite party no. 2 and his family members, the present case cannot be looked into in isolation to the FIR filed by petitioner no. 1. Moreover, the tenor and nature of the allegation, that in the temple, the petitioners would surround them and assault them and snatch away gold chain and earrings is highly improbable for the reason that the petitioner no. 1 is a lady and petitioners no. 2 and 3 are the parents of petitioner no. 1 and, thus, it is obvious that they are advanced in age. Moreover, two ladies and an old man cannot be believed to have assaulted the opposite party no. 2 and his family members in a temple which at any point of time has many devotees and is not a lonely or desolate place. In any view of the matter, the Court finds that the allegations made in the present complaint case are highly improbable and unbelievable and clearly with the object of exerting pressure on the petitioners with regard to Chakmahesi P.S. Case No. 3 of 2013 filed by petitioner no. 1.

9. The Hon'ble Supreme Court in **State of Haryana v. Bhajan Lal** reported as **1992 Suppl. (1) SCC 335**, at paragraph no. 102, has enumerated categories under which 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, stands covered under categories 5 and 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. In the aforesaid background, the Court finds that the prosecution case is *mala fide*, untenable and solely intended to harass the petitioners.

13. Accordingly, the application is allowed. The entire criminal proceeding arising out of Complaint Case No. 252 of 2013, pending before the Court below at Samastipur, including the order dated 25.04.2013, by which cognizance has been taken, as far as it relates to the petitioners, stands quashed.

(Ahsanuddin Amanullah, J)

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