

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.14373 of 2012

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Hakim Mahiuddin Chisti S/O Ram Sarthi Thakur Resident Of Village-
Bhuidhara, P.S.- Muffasil, District- Samastipur.

... .. Petitioner/s

Versus

1. The State Of Bihar
2. Taimun Khatoon W/O Md. Kasim Resident Of Village- Bhuidhara, P.S.-
Muffasil, District- Samastipur.

... .. Opposite Party/s

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Appearance :

For the Petitioner/s	:	Mr. Ashok Kumar Singh with Mr. Sanjeet Kumar Tiwary, Advocates
For the O.P. No. 2	:	None
For the State	:	Mr. B. N. Pandey, APP

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CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH

ORAL JUDGMENT

Date : 18-01-2019

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

2. Initially notice was issued at the stage of admission to
opposite party no. 2 and was validly served. However, nobody has
entered appearance on her behalf. Subsequently, when the matter
was admitted for hearing again there was a direction to issue
notice both under registered cover with A.D. as well as ordinary
process by order dated 09.12.2014. It appears that notices were
issued in December, 2014 itself to the opposite party no. 2 in the
hearing matter but the service report of notice issued under
ordinary process was returned with a note that ‘ the opposite party



no. 2 had gone outside for treatment of her husband'. However, neither A.D. nor undelivered cover has been received.

3. In view of the aforesaid position, when initially the service was effected personally on opposite party no. 2 and thereafter it is not that she has changed her residence and further that registered cover with A.D. has not been returned, it can be presumed in law that notice has been served. Accordingly, the Court has proceeded to hear the matter.

4. 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, the present petition is being filed for quashing of the order dated 20.2.2012 passed in complaint case 575/2011 (Taiman khatoon is Md Basir & other) by Sri Rakesh Kumar, J.M. 1st Class, Samastipur by which cognizance for the offence under Section 323,341,354 & 504 read with 34 of the Indian Penal Code taken and summons were issued against the petitioner & other.”

5. The allegation against the petitioner and four others is of assault and tearing the clothes of the complainant and also taking away of cloth and ornaments.

6. Learned counsel for the petitioner submitted that the entire complaint is false and frivolous. It was submitted that the complaint case was filed on 19.05.2011 as a counter to the



criminal case filed by one of the co-accused against the son of the complainant and two others being Samastipur Sadar P.S. Case No. 249 of 2011 on 18.05.2011. Learned counsel submitted that the incident narrated in the case filed by the co-accused in the present case and the complaint are the same. Learned counsel submitted that the co-accused in the present case namely Md. Hamid, who is the informant of Samastipur Sadar P.S. Case No. 249 of 2011, had alleged assault by the son of the complainant and two others for the reason that he was a witness in a case against them. Learned counsel submitted that in the complaint case one of the enquiry witnesses is the mother of another accused in Samastipur Sadar P.S. Case No. 249 of 2011. Learned counsel submitted that the falsity in the present case would be apparent from the fact that in the enquiry under Section 202 of the Code, the husband of the complainant has deposed before the court in which to a query of the court, he has categorically stated that the complaint case had been filed for saving the accused of Samastipur Sadar P.S. Case No. 249 of 2011. Learned counsel submitted that from the aforesaid, it is clear that the entire compliant case is a counterblast to Samastipur Sadar P.S. Case No. 249 of 2011 and clearly *mala fide*.



7. Learned A.P.P. for the State fairly submitted that in view of the statement of the husband of the complainant himself before the court that the complaint was filed only to save the accused of Samastipur Sadar P.S. Case No. 249 of 2011, the prosecution appears to be for oblique reason.

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. The truth having come out from the mouth of the husband of the complainant himself that the present was a counterblast to save the accused of Samastipur Sadar P.S. Case No. 249 of 2011, there is no doubt that the present criminal prosecution, besides being an abuse of the process of the court, is clearly with the intention of wreak vengeance and, thus, is purely *mala fide*.

9. In this connection, the Court would refer to the decision of the Hon'ble Supreme Court in the case of **State of Haryana v. Bhajan Lal** reported as **1992 Supplementary (1) Supreme Court Cases 335** where at paragraph no. 102, categories have been laid down where the Court should exercise 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 clearly falls under category 7 of paragraph no. 102 of the aforesaid judgment in the case of **Bhajan Lal** (supra).

11. Further, the Hon’ble Supreme Court in the case of **State of Karnataka v. L. Muniswamy** reported as (1977) 2 Supreme Court Cases 699 has clearly held that the purpose of Section 482 of the Code is to secure the ends of justice to stop the abuse of the process of the court. The relevant being at paragraph no. 7 is quoted hereinbelow:

“7In 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 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. The ends of justice are higher than the, ends of mere law though justice has got to be. administered according to laws made by the legislature. The compelling necessity for making these observations is that without a proper realisation of the object and purpose of the provision which seeks to save the inherent powers of the High Court to do justice between the State and its subjects it would be impossible to appreciate the width and contours of that salient jurisdiction.”

12. For reasons aforesaid, the application is allowed.

The entire proceeding arising out of Complaint Case No. 575 of 2011, including order dated 20.02.2012 by which cognizance has been taken, as far as it relates to the petitioner, stands quashed.

(Ahsanuddin Amanullah, J)

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