

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No. 30430 of 2014

Arising Out of Complaint Case No.-2991 C Year-2012 Thana- PATNA COMPLAINT CASE
District- Patna

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Subodh Kumar, S/o Late Vishwanath Singh Resident of Village- Bhogipur,
P.S.- Gopalpur, District- Patna.

... .. Petitioner/s

Versus

1. The State of Bihar.
2. Sri Arvind Singh Son of Late Siya Sharan Singh Resident of Village-
Shekhpura, P.S. Ramkrishna Nagar, District- Patna.

... .. Opposite Party/s

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Appearance :

For the Petitioner/s	:	Mr.Deovind Kumar Singh, Advocate
For the Opposite Party no. 2	:	Mr. Sanjay Kumar Verma, Advocate
For the State	:	Mr. Md. Arif, Advocate

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CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN
AMANULLAH
ORAL JUDGMENT

Date : 08-01-2019

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 being filed for quashing of the cognizance order dated 15.01.2014 passed by Sri Amit Raj, J.M. 1st Class, Patna in Complaint Case No. 2991(c) of 2012 in which the learned Magistrate has taken cognizance u/s- 323, 341, 380 of I.P.C. against the petitioner.”

3. The allegation against the petitioner and three others is of having forcibly entered the house of the complainant and having assaulted her and at the point of gun, taking away money and ornaments and also a bag containing documents.

4. Learned counsel for the petitioner submitted that there is dispute between the parties and the present case has been filed as a counter blast to the cases filed by him against the mother-in-law of the complainant and other family members. It was submitted that the same was filed in the year 2010, whereas the present case has been filed in the year 2012. Learned counsel submitted that in the case filed by the petitioner, cognizance has been taken by the Court and trial is going on. Learned counsel submitted that in the complaint case filed by the mother-in-law of the complainant in the present case, in the year 2005 against the petitioner and others, the same has resulted in acquittal. Similarly, another complaint case filed by the mother-in-law of the present complainant in the year 2010 has resulted in the compromise between the parties. Learned counsel submitted that even in the present case, the plain reading of the complaint would indicate that



the allegations are cosmetic, inasmuch as, at paragraph no. 2, it is alleged that the wife of the petitioner, who is also accused, had abused the complainant and exhorted the other accused to beat up the complainant. Learned counsel submitted that surprisingly no reason has been assigned for the incident and in the background of past enmity, such incident of taking away of Rs. 25,000/- along with gold chain and bag containing documents and general assault leading to loss of Rs. 1,00,000/- of articles is totally unnatural and unbelievable. It was further submitted that no medical report has been submitted in support of the allegations made of assault on the complainant. Learned counsel submitted that the root cause and the genesis of the entire dispute between the parties is with regard to 36 decimals of land, which the petitioner had purchased from the vendee of the land sold by the father-in-law of the complainant and his brother in the year 1975, which the complainant claims to have bought in auction purchase from the Bank in the year 1988.

5. Learned A.P.P. and learned counsel for the Opposite Party No. 2 submitted that the petitioner along with others had committed the crime and the Court below after holding enquiry and recording the statement of witnesses had rightly taken cognizance. However, learned counsel for the Opposite Party No. 2 at the very outset, submitted that no doubt the matter relates to



civil dispute, but referred to the decision of the Hon'ble Supreme Court in the case of **Ganga Dhar Kalita v. State of Assam** reported as **(2015) 9 SCC 647**, the relevant being at paragraphs no. 8, 9 and 10 to show when quashing of criminal proceedings under Section 482 of the Code is not warranted.

6. Having considered the facts and circumstances of the case and submissions of learned counsel for the parties, in the opinion of the Court, a case for interference has been made out. Purely on technicalities, the witnesses in a complaint enquiry obviously would state things which are as per the averments made in the complaint petition, but the same have to be tested on the probability and natural conduct of persons and events. It is not in dispute that the parties have been fighting against each other since long before and, thus, there is a background of such litigation.

7. In the present case, the dispute, starting from the year 1988 clearly relates to the claim of the parties on the 36 decimals of land and this has resulted in both sides filing complaint cases against each other. This regular filing of complaint cases against each other is, thus, indicative that there may not be much truth about the allegations and counter allegations, since in the normal course of events, for any criminal activity, the first and obvious step is to approach the local police station. None of the parties



have done the same, for which there is a stereotyped excuse, and are in the habit of filing complaint cases against each other. In such background, it is highly improbable that the petitioner, along with his wife and two others, would go to the house of the complainant with whom there was already a long tradition of enmity and litigation and commit assault and also abuse the complainant and take away money and other articles, which clearly they could not have expected to get away with. Moreover, though the Hon'ble Supreme Court has repeatedly held that the power under Section 482 of the Code should be sparingly used, but once the Court is convinced that the criminal proceeding would be an abuse of the process of the Court, for the purpose of securing the ends of justice, the inherent power of the Court is required to be exercised. At this stage, the Court considered it relevant to refer to the recent judgment of the Hon'ble Supreme Court dated 2nd November, 2018, in the case of **Himachal Pradesh Cricket Association v. State of Himachal Pradesh** reported as **2018 SCC OnLine SC 2419**, in which at paragraph no. 49, the following has been held:

“49. We are conscious of the scope of powers of the High Court under Section 482 of Cr.P.C. The inherent jurisdiction is to be exercised carefully and with caution and only when exercise is justified by the tests specifically laid down in the Section itself. Further, inherent power under this provision is not the rule but it is an exception.



The exception is applied only when it is brought to the notice of the Court that grave miscarriage of justice would be committed if the trial is allowed to proceed where the accused would be harassed unnecessarily. If the trial is allowed to linger when prima facie it appears to the Court that the trial could likely to be ended in acquittal. It is, for this reason, principle which is laid down by catena of judgments is that the power is to be exercised by the High Court either to prevent abuse of process of any court or otherwise to secure the ends of justice. However, whenever it is found that the case is coming within the four corners of the aforesaid parameters, the powers possessed by the High Court under this provision are very wide. It means that the Court has to undertake the exercise with great caution. However, the High Court is not to be inhibited when the circumstances warrant exercise of such a power to do substantial justice to the parties. This provision has been eloquently discussed in Bhajan Lal's case which has become locus classicus. Principle Nos. (i) and (ii) of Indian Oil Corporation are, therefore, become applicable. The entire subject matter has been revisited in a recent judgment in Vineet Kumar and some of the discussion therein which takes note of earlier judgments is reproduced below:

"26. A three-Judge Bench in State of Karnataka v. M. Devendrappa [State of Karnataka v. M. Devendrappa, (2002) 3 SCC 89 : 2002 SCC (Cri) 539] had the occasion to consider the ambit of Section 482 CrPC. By analysing the scope of Section 482 CrPC, this Court laid down that authority of the Court exists for advancement of justice and if any attempt is made to abuse that authority so as to produce injustice the Court has power to prevent abuse. It further held that Court would be justified to quash any proceeding if it finds that initiation/continuance of it amounts to abuse of the process of court or quashing of these proceedings would otherwise serve the ends of justice. The following was laid down in para 6:

"6. ... All courts, whether civil or criminal possess, in the absence of any express provision, as inherent in their constitution, all such powers as are necessary to do the right and to undo a wrong in course of administration of justice on the principle quando lex aliquid alicui concedit, concedere videtur et id sine quo



res ipsae esse non potest (when the law gives a person anything it gives him that without which it cannot exist). While exercising powers under the section, the court does not function as a court of appeal or revision. Inherent jurisdiction under the section though wide has to be exercised sparingly, carefully and with caution and only when such exercise is justified by the tests specifically laid down in the section itself. It is to be exercised *ex debito justitiae* to do real and substantial justice for the administration of which alone courts exist. Authority of the court exists for advancement of justice and if any attempt is made to abuse that authority so as to produce injustice, the court has power to prevent abuse. It would be an abuse of process of the court to allow any action which would result in injustice and prevent promotion of justice. In exercise of the powers court would be justified to quash any proceeding if it finds that initiation/continuance of it amounts to abuse of the process of court or quashing of these proceedings would otherwise serve the ends of justice. When no offence is disclosed by the complaint, the court may examine the question of fact. When a complaint is sought to be quashed, it is permissible to look into the materials to assess what the complainant has alleged and whether any offence is made out even if the allegations are accepted in toto."

27. Further in para 8 the following was stated: (Devendrappa case [State of Karnataka v. M. Devendrappa, (2002) 3 SCC 89 : 2002 SCC (Cri) 539],

"8. ... Judicial process should not be an instrument of oppression, or, needless harassment. Court should be circumspect and judicious in exercising discretion and should take all relevant facts and circumstances into consideration before issuing process, lest it would be an instrument in the hands of a private complainant to unleash vendetta to harass any person needlessly. At the same time the section is not an instrument handed over to an accused to short-circuit a prosecution and bring about its sudden death. The scope of exercise of power under Section 482 of the Code and the categories of cases where the High Court may exercise its power under it relating to cognizable offences to prevent abuse of process of any court or otherwise to secure the ends of justice were set out in some detail by



this Court in State of Haryana v. Bhajan Lal [State of Haryana v. Bhajan Lal, 1992 Supp (1) SCC 335 : 1992 SCC (Cri) 426]."

8. Further, the law relating to quashing of criminal proceeding has been laid down by the Hon'ble Supreme Court in the case of **State of Haryana v. Bhajan Lal reported as 1992 Supp (1) SCC 335** at paragraph no. 102, which 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 exercise.

(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 falls under category 7 of the aforesaid judgment in the case of **Bhajan Lal** (supra).

10. As far as the case of **Ganga Dhar Kalita** (supra), which has been relied upon by learned counsel for the petitioner, is concerned, the Court would indicate that in the said case the allegation was of fraudulently executing a power of attorney by false signature of complainant's minor son and other *pattedars* of the land in dispute and selling it to others. In the present case



there is no allegation with regard to any fraud or forgery or impersonation.

11. For reasons aforesaid, the application stands allowed. The order dated 15.01.2014 passed by the Judicial Magistrate, 1st Class, Patna in Complaint Case No. 2991(C) of 2012 by which cognizance has been taken under Sections 323/341 and 380 of the Indian Penal Code, as far as it relates to the petitioner, stands quashed.

(Ahsanuddin Amanullah, J.)

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