

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.28556 of 2014

Arising Out of PS. Case No.-298 Year-2013 Thana- DARBHANGA SADAR District-
Darbhanga

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Kavita Aagney W/o Sri Suresh Kumar Sahni Resident of Mohalla Nakhas
Machuatoli, P.S. Mal Salami, District Patna, presently residing at Mohalla
Shivajeenagar, P.S. Town, District Darbhanga.

... .. Petitioner/s

Versus

1. The State of Bihar
2. Shiv Kumar Sahni S/o late Dhako Sahni, Mohalla-Bakarganj, P.S.-
Laheriasarai, District- Darbhanga at present Mantri Darbhanga Block
Fishermen Cooperative Society Ltd. Bakarganj, Darbhanga.

... .. Opposite Party/s

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Appearance :

For the Petitioner/s	:	Mr. Ajay Kumar Thakur, Advocate Mr. Ritwaj Raman, Advocate Ms. Sweta Kumari, Advocate Mr. Udbhav, Advocate
For the Opposite Party/s :		Mr. Arvind Kumar Tiwary, Advocate
For the State	:	Mr. Md. Arif, Advocate

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

ORAL JUDGMENT

Date : 04-01-2019

Heard Mr. Ajay Kumar Thakur, 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 for the following
relief:

*“That, this is an application for
quashing the order dated 17.04.2014 passed by
the learned Chief Judicial Magistrate,
Darbhanga in Darbhanga Town P.S. Case No.
298/13 dated 6.12.2013 whereby and*



whereunder learned Chief Judicial Magistrate took cognizance against the petitioner under section 406, 420 of the Indian Penal Code.”

3. The opposite party no. 2, in the F.I.R. has alleged that the petitioner despite having lost the election for the post of Secretary, Darbhanga Block Fishermen Cooperative Society Limited (hereinafter referred to as the 'Society') has not handed over the original papers of the Society and also not returned Rs. 76,761/-.

4. Learned counsel for the petitioner submitted that without going into the merits of the matter, from the plain reading of the F.I.R., it is apparent that the same is totally frivolous and misconceived. It was submitted that in the entire F.I.R., the only allegation being that the petitioner even after having been defeated after contesting for the post of Secretary of the Society was still retaining the original documents and has also not returned certain amount, can in no way be a cause for initiating any criminal proceeding as it is a purely civil dispute for which either the departmental authorities are empowered to take action or the Society can move the Civil Court of competent jurisdiction. It was submitted that the petitioner has been unnecessarily made accused in the present case which is also *mala fide* and malicious.



5. Learned A.P.P. and learned counsel for the opposite party no. 2 submitted that the petitioner is not fair as despite having lost the election has not returned the records and the money. However, on a direct query of the Court as to how for such cause of action, criminal case is maintainable, they fairly admitted that there are departmental and civil remedies available.

6. 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. In the present case, the matter is of a totally civil nature without any criminal offences being made out even if the allegations in the F.I.R. are accepted at face value.

7. The Hon'ble Supreme Court in the case of **State of Haryana vs. Bhajan Lal** reported as **1992 Supp (1) SCC 335**, at paragraph no. 102 has held 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.”



8. Similarly, the Hon'ble Supreme Court in the case of **Indian Oil Corpn. v. NEPC India Ltd.** reported as (2006) 6 SCC 736, at paragraph no. 13, has held thus:

“13. Any effort to settle civil disputes and claims, which do not involve any criminal offence, by applying pressure through criminal prosecution should be deprecated and discouraged.....”

9. In the aforesaid background, the Court finds that the present case against the petitioner is an abuse of the process of the Court.

10. Accordingly, the application is allowed. The order dated 17.04.2014 passed by the Chief Judicial Magistrate, Darbhanga in Darbhanga Town P.S. Case No. 298 of 2013, taking cognizance under Sections 406/420 of the Indian Penal Code, against the petitioner, stands quashed.

(Ahsanuddin Amanullah, J)

P. Kumar

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