

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.10925 of 2013

Arising Out of PS. Case No.-700 Year-2012 Thana- SAMASTIPUR COMPLAINT CASE
District- Samastipur

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Amrita Kumari D/O Suresh Sahni Resident Of Village- Bhakhtiyarpur, P.S.-
Chakmahesi, District- Samastipur

... .. Petitioner/s

Versus

1. The State Of Bihar
2. Dhanukhi Sahni S/O Late Keshwar Sahni Resident Of Village- Bakhtiyarpur,
P.S.- Chakmahesi, Dist.- Samastipur

... .. Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Ritesh Kumar, Advocate
For the State : Mr. Jharkhandi Upadhyay, Advocate

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CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN
AMANULLAH

ORAL JUDGMENT

Date : 09-01-2019

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

2. Despite service of notice on the opposite party no. 2
(complainant), nobody appeared on his behalf when the case was
taken up and heard.



3. 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 is an application for quashing the order dated 27.09.12 passed by Sri Surya Kant Tiwary, learned Judicial Magistrate, Ist Class, Samastipur in complaint case no. C.R. no. 700/12 whereby and where-under cognizance has been taken against all the accused persons named in the complaint petition including the petitioner under Sections 323, 380 and 427 of the I.P.C.”

4. The allegation against the petitioner and 10 others is of ransacking the house of the opposite party no. 2 and also abusing and assaulting the family members with intention to loot, steal and demolish their house. It is further alleged that the accused were armed with *lathi*, *spade*, *khanti* and due to their activities, the opposite party no. 2 suffered a loss of Rs. 46,000/- and further that co-accused Saudagar Sahni took away one tin box containing ornaments and clothes worth Rs. 68,000/- and when they were retreating, they had threatened the complainant that if she did not withdraw the Partition Suit, they would kill and kidnap the lady members of the family.

5. Learned counsel for the petitioner submitted that at the relevant time, she was 19 years old and her entire family has been made an accused in this patently false and fabricated case. It



was submitted that in reality, it was the complainant's side which had attacked the petitioner and her family members and had also demolished part of the house standing on their land for which *fardbeyan* was recorded on 30.04.2012 itself by the petitioner, who was injured, in the hospital, which was sent to the concerned police station resulting in lodging of Chakmahesi P.S. Case No. 41 of 2012 dated 09.05.2012. Learned counsel submitted that there was injury on the petitioner whereas there is no injury report in support of the complaint and the complainant's case is a counter blast to the case lodged by the petitioner. Learned counsel submitted that the petitioner as well as her grandfather had also lodged complaint before the District Police authorities with regard to the police not properly investigating the case due to the clout of the accused. It was submitted that such position was also certified by the Gram Kutchery which, in its order dated 09.06.2010, recorded that the petitioner's family were constructing house on their own land and it was the complainant's family who were the aggressors and also that they were not co-operating with the Gram Kutchery and in fact creating obstacles. Learned counsel submitted that the petitioner had since married and living in her matrimonial home.



6. Learned A.P.P. submitted that the Court, upon enquiry, has found materials and taken cognizance. However, with regard to the fact that there was injury on the petitioner and a police case was lodged much prior to the filing of the complaint case indicating that it was for creating a defence, learned A.P.P. could not counter the position.

7. Here, it would be relevant to refer to the judgment of the Hon'ble Supreme Court in the case of **State of Haryana vs. Bhajan Lal** reported as **1992 Supp (1) SCC 335**, where at paragraph no. 102 categories have been enumerated where power under Section 482 of the Code should be exercised. 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 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. From the above, the Court finds that the present case is covered under category 7 of the aforesaid judgment.



9. For reasons aforesaid, the application is allowed. The order dated 27.09.2012 passed by the Judicial Magistrate, 1st Class, Samastipur in Complaint Case No. C.R. No. 700 of 2012, by which cognizance has been taken under Sections 323, 380 and 427 of the Indian Penal Code, as far as it relates to the petitioner, stands quashed.

(Ahsanuddin Amanullah, J)

P. Kumar

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