

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.6941 of 2015**

Arising Out of Case No.-481C Year-2012 Thana- PATNA COMPLAINT CASE District-
Patna

Pratibha Chand @ Pratibha Chandra Sinha W/o Shri Anil Kumar Sinha R/o
Chandrayan Shivajee Path Yarpur, P.S.- Gardanibagh, District- Patna.

... .. Petitioner/s

Versus

1. The State Of Bihar
2. Urmila Devi W/o Late Surendra Kumar Sinha R/o Village- Bijaypuri, Ram
Jaipal Nagar, Baily Road, P.S. - Rupaspur, District- Patna.

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Anil Kumar Choudhary, Advocate
For the State : Mr. Jharkhandi Upadhyay, APP

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

Date : 17-05-2019

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

2. Despite valid service of notice on opposite party no.
2, nobody appeared when the matter 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, petitioner of this case filed this
application for quashing of the order dated 24-
09-2012 passed by the learned Judicial
Magistrate 1st class, Danapur, District-Patna
whereby and where under the learned court has
found prima facie case under section 418 and
423 of the Indian Penal code against the*



petitioner and summon has been issued in connection with Complaint case 481(c)/2012.”

4. The allegation against the petitioner in Complaint Case No. 481 (C) of 2012 filed by the opposite party no. 2-complainant is that part of the land belonging to the opposite party no. 2 which she had bought from Vijay Sahkari Grih Nirman Samiti (hereinafter referred to as the ‘Society’), in the year 1983 had been bought by the petitioner in the year 1992 and thereafter she had sold it to another person. The opposite party no. 2 had made the office bearers and other persons of the said society also accused in the case.

5. Learned counsel for the petitioner submitted that the present is a purely civil dispute without there being any allegation against the petitioner, except for one place where it has been stated at paragraph no. 5 of the complaint that half of the plot of the complainant was sold to the petitioner and it was further transferred to some other person. It was submitted that nowhere in the complaint, there is any allegation against the petitioner which indicates any criminal misconduct. Learned counsel submitted that just because she was in a chain of such transfers, she has been unnecessarily made accused. Learned counsel submitted that in any view of the matter, the petitioner had got the land from the Society and, thus, she was not responsible, even if it is assumed



that there was some wrong on the part of the Society in transferring the portion of the land to the petitioner. Learned counsel submitted that at best, it can give a cause of action on the civil side to the opposite party no. 2 to file a suit for cancellation of the sale deed in favour of the petitioner but criminal proceeding is an abuse of the process of the Court.

6. Learned APP fairly submitted that from the complaint, no criminal offence is made out against the petitioner.

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. As has rightly been submitted by learned counsel for the petitioner, the only role attributed to her is at paragraph no. 5 of the complaint which reads as under:

“5. That somehow the complainant found out her plot but was surprised to see that half of her plot portion was sold to Smt. Pratibha Chander w/o Sri Anil Kumar Sinha resident of c/o Chandrayan, shivajee path, yarpur on 16.10.1992 and it was further transferred to some other person.”

9. From the aforesaid, it is clear that in fact there is no allegation against the petitioner as it has merely been stated that portion of the plot of the complainant was sold to the petitioner. Thus, it is clear that the petitioner was the purchaser and if at all the land had already been sold, it was for the transferee, i.e., the



Society, which had also transferred the land to the opposite party no. 2 and subsequently to the petitioner, which is responsible, but the petitioner cannot be fastened with any liability.

10. 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 where 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.”



11. The present case, in the opinion of the Court, falls under categories 1 and 7 of the aforesaid judgment in **Bhajan Lal** (*supra*) at paragraph no. 102.

12. Further, the case being a dispute with regard to the sale deed in favour of various parties, that too, by the Society and not by the petitioner, the same is a purely civil cause.

13. In this connection, the Hon'ble Supreme Court in **Indian Oil Corpn. v. NEPC India Ltd.**, reported as (2006) 6 SCC 736, has observed as follows at paragraph no. 13:

“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.....”

14. Similarly, 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 thus:

“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.....”

15. From the aforesaid, the Court finds that the present case is unsustainable, both on facts as well as in law.

16. Accordingly, the application is allowed. The entire criminal proceeding arising out of Complaint Case No. 481 (C) of 2012 pending before the Court below at Danapur in the district of Patna, including the order dated 24.09.2012, by which cognizance has been taken, as far as it relates to the petitioner, stands quashed.

(Ahsanuddin Amanullah, J)

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