

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.50064 of 2015

Arising Out of Case No.-2379C Year-2013 Thana- WEST CHAMPARAN COMPLAINT
District- West Champaran

-
1. Surendra Sharma son of Late Shankar Sharma.
 2. Bachchi Devi, wife of Surendra Sharma,
 3. Ashok Sharma, son of Bhirgun Sharma.
 4. Nathuni Sharma,
 5. Lalji Sharma,
 6. Shambhu Sharma, 4 to 6 sons of Late Banti Sharma,
 7. Om Prakash Sharma, son of Late Bindeshwary Sharma,
 8. Ram Bachchan Sharma, son of late Bharat Sharma,
 9. Jitendra Sharma, son of Ram Bachchan Sharma,
 10. Gobind Sharma, Son of Shambhu Sharma.
 11. Ghamshan Sharma @ Ghanshyam Sharma, son of Om Prakash Sharma,
 12. Mithilesh Sharma, Son of Nathuni Sharma,
 13. Tuntun Sharma, son of Nathuni Sharma
 14. Ram Kishun Sharma, son of Late Harayug Sharma
- All resident of village- Paroraha Lohar Toli, Police Station- Lauriya, District- West Champaran.

... .. Petitioner/s

Versus

1. The State Of Bihar
2. Manturiya Devi, wife of Fulena Sharma, resident of village- Paroraha Lohar Toli, Police Station- Lauriya, District- West Champaran.

... .. Opposite Party/s

with

Criminal Miscellaneous No. 17053 of 2015

Arising Out of PS. Case No.-146 Year-2013 Thana- LAURIA District- West Champaran

-
1. Surendra Sharma Son of Late Shankar Sharma
 2. Nathuni Sharma,
 3. Shambhu Sharma
 4. Lalji Sharma, 2 to 4 sons of Late Banti Sharma
 5. Om Prakash Sharma, son of Late Bindeshwary Sharma
 6. Ram Bachan Sharma, son of Late Bharat Sharma and
 7. Mithilesh Sharma son of Nathuni Sharma,
- All resident of village- Paroraha Lohar Toli, P.S.- Lauriya, District- West Champaran

... .. Petitioner/s

Versus

1. The State Of Bihar
2. Manturiya Devi, wife of Fulena Sharma, resident of village- Paroraha Lohar Toli, P.S.- Lauriya, District- West Champaran

... .. Opposite Party/s



Appearance :

(In Criminal Miscellaneous No. 50064 of 2015)

For the Petitioner/s : Mr. Zainul Abedin, Advocate

For the Opposite Party/s : Mr. Aditya Narayan Singh I, APP

(In Criminal Miscellaneous No. 17053 of 2015)

For the Petitioner/s : Mr. Zainul Abedin, Advocate

For the Opposite Party/s : Mr. Jharkhandi Upadhyay, APP

CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH
ORAL JUDGMENT

Date : 19-02-2019

Heard learned counsel for the petitioners and learned
A.P.Ps. for the State.

2. Despite valid service of notice on opposite party no. 2
in both the cases and learned counsel for the opposite party no. 2
also entering appearance in Cr. Misc. No. 17053 of 2015 on
18.01.2016 and his name also appearing in the cause list, nobody
appeared when the matter was taken up and heard.

3. The petitioners in Cr. Misc. No. 50064 of 2015, being
14 in number, have 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 under the inherent
jurisdiction of the Hon'ble Court for quashing
being filed against the order dated 03.01.2015 in
Trial No. 3361 of 2015, arising out of Complaint
Case No. -2379C/2013 passed by Learned Sri
Mitesh Kumar, 1st Class Judicial Magistrate,
Bettiah, West Champaran whereby and*



whereunder cognizance of the offence has been taken under sections 323 and 379 of the Indian Penal Code against the petitioners without considering the facts of this case which has filed a view to harass and humiliate the petitioners.”

4. The petitioners in Cr. Misc. No. 17053 of 2015, being 7 in number, have moved the Court under Section 482 of the Code for the following relief:

“That this is an application under the inherent jurisdiction of the Hon'ble Court for quashing being filed against the order dated 04.02.2015 in Trial No. 3285 of 2015, arising out of Lauriya P.S. Case No.- 146/2013 passed by Learned Sri R. R. Sahay, 1st Class Judicial Magistrate, Bettiah, West Champaran whereby and whereunder cognizance of the offence has been taken under sections 341, 323, 504, 379 and 448 of the Indian Penal Code against the petitioner without considering the facts of this case which has filed a view to harass and humiliate the petitioners.”

5. The parties, who are neighbours, have continuing enmity between them and there have been a number of litigations between them. For an incident, between the sons of the petitioner no. 1 and relative of opposite party no. 2, the wife of petitioner no. 1 had lodged Lauriya P.S. Case No. 141 of 2013 dated 27.08.2013



under Sections 341/323/379/504/506/34 of the Indian Penal Code against the husband of opposite party no. 2 and other associates alleging that the son of relative of opposite party no. 2 had taken away Rs. 5/- from the pocket of the son of petitioner no. 1 and due to altercation between the parties, the wife of petitioner no. 1 and her son were badly beaten up but somehow they managed to get away due to intervention of co-villagers.

6. The opposite party no. 2 thereafter lodged Lauriya P.S. Case No. 146 of 2013 dated 02.09.2013 under Sections 143/341/323/448/380/149 of the Indian Penal Code. In the same, the police, after investigation, submitted Final Form/Report No. 151 of 2013 dated 31.10.2013, holding that the allegations were totally untrue. The same has been accepted by the Court below. The opposite party no. 2 in Lauriya P.S. Case No. 146 of 2013 alleged that the petitioners had entered into her house and taken away Rs. 13,500/- in cash; two pairs of payal of silver weighing 7 $\frac{1}{2}$ *bhars*; silver *hasuli* weighing about 12 *bhars*; gold earrings weighing 6 *ana bhars* and that the petitioners started assaulting the inmates and ran away. In the same, after submission of Final Form, the same was accepted but cognizance has been taken under Sections 341/323/504/379/448 of the Indian Penal Code on the



basis of Protest-cum-Complaint Petition filed by the opposite party no. 2 in the said case.

7. The opposite party no. 2 again filed Complaint Case No. 2379C of 2013 on 05.09.2013 against the petitioners of Cr. Misc. No. 50064 of 2015 in which cognizance has been taken against the petitioners under Sections 323 and 379 of the Indian Penal Code by order dated 03.01.2015. The allegation in the complaint case was that the petitioners had surrounded the opposite party no. 2 calling her to be a *daain* and petitioner no. 3 had kept sword on the head of the opposite party no. 2 and was asking that the opposite party no. 2 should end her spell due to which the son of petitioner no. 1 was ill and then the petitioners made the opposite party no. 2 to lick the spit and thrashed her with slaps and kicks. It was further alleged that the petitioners entered into the house of the opposite party no. 2 and started breaking things due to which she suffered loss of about Rs. 9,000/- and they fled taking away Rs. 65,000/- cash which was kept in a metal box; *hasuli* of silver weighing about 18 *bhars*, worth Rs. 30,000/-; *payal* weighing 8 *bhars*, worth Rs. 5,600/-; *kangan* weighing 6 *bhars*, worth Rs. 4,200/-; *lavang* of gold weighing *chawanni bhar*, worth Rs. 5,000; golden tops $\frac{1}{2}$ *bhar*, worth about Rs. 17,000/- and gold *tika nathia* weighing 1 *bhar*, worth Rs. 35,000/-. It was



further alleged that reputed persons of the area suggested for panchayati which was to be finally held on 04.09.2013 but the petitioners did not turn up.

8. With reference to Cr. Misc. No. 17053 of 2015, learned counsel for the petitioners submitted that Lauriya P.S. Case No. 146 of 2013 is a counterblast to Lauriya P.S. Case No. 141 of 2013 which was filed by the wife of petitioner no. 1. In the said case, the police had submitted final form finding the case to be completely false and on the basis of a Protest-cum-Complaint Petition by the opposite party no. 2, cognizance was taken on 04.02.2015. Learned counsel submitted that almost identical allegations have been levelled with regard to theft of cash and articles in Complaint Case No. 2379C of 2013 filed by the same opposite party no. 2 against the petitioners. It was submitted that from the same, it is clear that only to pressurize the petitioners from pursuing Lauriya P.S. Case No. 141 of 2013, in which the police have found the case to be true and upon submission of chargesheet, cognizance has been taken and trial has also begun, both the cases have been filed. Learned counsel submitted that it is quite unbelievable that the petitioners would commit more or less identical nature of crime by committing theft of cash and articles on 23.08.2013 and 02.09.2013. It was submitted that Complaint



Case No. 2379C of 2013 has been filed after 12 days of the incident alleged to have taken place on 23.08.2013 at 4:00 P.M. and after 8 days of the wife of the petitioner no. 1 filing Lauriya P.S. Case No. 141 of 2013. It was submitted that the incident for which Lauriya P.S. Case No. 141 of 2013 was lodged also occurred on 23.08.2013 at about 5.00 P.M. and just to save the skin of the accused in that case, the opposite party no. 2 had filed both Lauriya P.S. Case No. 141 of 2013 on 02.09.2013 followed by Complaint Case No. 2379C of 2013 on 05.09.2013 making almost similar and identical allegations against the petitioners in both the cases. Learned counsel submitted that the *mala fide* conduct of opposite party no. 2 and her relatives would be clear from the fact, that though Lauriya P.S. Case No. 146 of 2013 was filed on 02.09.2013 by the opposite party no. 2 against 7 petitioners and Complaint Case No. 2379C of 2013 was filed on 05.09.2013 against 14 petitioners, which included the accused of Lauriya P.S. Case No. 146 of 2013, but in the Complaint Case which was filed after 3 days of Lauriya P.S. Case No. 146 of 2013, there is not even a whisper with regard to Lauriya P.S. Case No. 146 of 2013 being filed by the opposite party no. 2 against 7 accused persons out of 14 accused in Complaint Case No. 2379C of 2013. Learned counsel submitted that one after the other the opposite party no. 2



and her family members are now trying to create a defence in Lauriya P.S. Case No. 141 of 2013 by falsely implicating the petitioners in various cases but from their conduct and suppression of facts in the cases, they have exposed their hidden agenda and clearly the cases lodged by them is an abuse of the process of the Court.

9. Learned A.P.P. fairly submitted that from the conduct of opposite party no. 2 and the sequence of events, it appears that the prosecution against the petitioners by the opposite party no. 2 is not *bona fide*.

10. 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.

11. The husband and other family members of opposite party no. 2 were accused in Lauriya P.S. Case No. 141 of 2013 filed by petitioner no. 2 in Cr. Misc. No. 50064 of 2015 on 27.08.2013. This was the starting point for the opposite party no. 2 to first file Lauriya P.S. Case No. 146 of 2013 on 02.09.2013 followed by Complaint Case No. 2379C of 2013 on 05.09.2013. Perusal of the F.I.R. of Lauriya P.S. Case No. 146 of 2013 and Complaint Case No. 2379C of 2013 reveals that the allegations are almost similar and identical; of theft of cash and articles which



also, more or less, are similar, with the only difference being that in Complaint Case No. 2379C of 2013, the further allegation is that the petitioner had called the opposite party no. 2 a *daain* and threatened her to end the spell she had cast on the son of petitioner no. 1 and to make him healthy. Further, the Court finds that there being not even a whisper in Complaint Case No. 2379C of 2013 with regard to Lauriya P.S. Case No. 146 of 2013, which was filed by opposite party no. 2 herself, and against the common petitioners, with more or less similar allegations, is a grave suppression of material fact. Further, the pleading in the Complaint Case that the police asked her to file a case without accepting her complaint cannot be believed for the reason that three days prior to filing of the complaint, she had filed a police case i.e., Lauriya P.S. Case No. 146 of 2013 which has been accepted by the police. Further, the police case for an incident dated 02.09.2013 being lodged on 02.09.2013 by the opposite party no. 2, there is no justifiable reason for filing the complaint case on 05.09.2013 for an event which allegedly took place on 23.08.2013, i.e., prior to even 02.09.2013. Moreover, the Court finds that in both Lauriya P.S. Case No. 146 of 2013 and Complaint Case No. 2379C of 2013, there is no explanation as to why none of the neighbours intervened or helped the opposite party no. 2 and her family



members, if at all the petitioners had come to her house and committed the offence, as alleged. Further, the police finding the allegations in Lauriya P.S. Case No. 146 of 2013 to be completely false also cannot be lost sight of and is a definite indicator that the prosecution lodged by the opposite party no. 2 against the petitioners is for oblique reasons and to harass them.

12. At this stage, it would be useful to refer to the judgment of the Hon'ble Supreme Court in **State of Haryana v. Bhajan Lal** reported as **1992 Supplementary (1) Supreme Court Cases 335** where at paragraph no. 102, categories have been enumerated where the Court should 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.”

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

14. Further, 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 as under:

*“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. For reasons aforesaid, the Court finds that the prosecution is *mala fide*, untenable and solely intended to harass the petitioners.

16. Accordingly, the applications are allowed. The entire criminal proceeding arising out of Lauriya P.S. Case No. 146 of 2013 and Trial No. 3285 of 2015, including the order taking cognizance dated 04.02.2015, stand quashed.

17. Similarly, the entire criminal proceeding arising out of Complaint Case No. 2379C of 2013 (Trial No. 3361 of 2015), including the order taking cognizance dated 03.01.2015, also stand quashed.

(Ahsanuddin Amanullah, J)

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