IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No. 34050 of 2014

Arising Out of Complaint Case No.-1447 Year-2013 Thana- GAYA COMPLAINT CASE District- Gaya

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1. Shambhu Sharan Sharma Son of Late Ram Pukar Sharma.
2. Santosh Kumar @ Santosh Singh Son of Late Ram Pukar Sharma.
3. Chandra Sekhar Sharma Son of Late Ram Pukar Sharma.
4. Dhananjay Kumar Son of Gopal Singh.
   All 1 to 4 are Resident of Village - Salempur, P.S.- Paraiya and District – Gaya.
5. Purushottam Sharma Son of Late Saryug Prasad, Resident of Village - Sang Paresh, P.S.- Paraiya and District – Gaya.

... ... Petitioner/s

Versus

1. The State of Bihar
2. Avinash Singh Son of Late Paras Singh, Resident of Village Salempur, P.S.- Paraiya and District - Gaya at Present Residing at Mohalla - Shivpuri Colony, P.S.- Chandauti and District – Gaya.

... ... Opposite Party/s

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Appearance :

For the Petitioner/s	:	Mr. Kumar Vikram, Advocate
For the Opposite Party No. 2	:	Mr. Binod Kumar, Advocate
For the State	:	Mr. Md. Arif, A.P.P.

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CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH

ORAL JUDGMENT

Date : 09-01-2019

Heard learned counsel for the petitioners; learned A.P.P. for the State and learned counsel for the opposite party no. 2.

2. The petitioners have moved the Court under Section 482 of the Code of Criminal Procedure, 1973 for the following relief:

> *“ That this is an application for quashing order dt. 6.6.2014 passed in Complaint Case No. 1447/13 by the learned Chief Judicial Magistrate, Gaya whereby he was pleased to order that prima facie case under sections 384, 342 and 120B of the*

Indian Penal Code was made out against the petitioners/accused persons and further ordered for issuance of summons against them."

3. The opposite party no. 2, who is the complainant has accused the petitioners of abduction and forcibly getting a sale deed executed from him at gunpoint.

4. Learned counsel for the petitioners submitted that the present case is totally false, frivolous and with *mala fide* intention. It was submitted that the opposite party no. 2 had taken Rs. 4.5 lakhs cash and Rs. 5.5 lakhs through cheque, which is reflected from his passbook entry on 28.04.2012 i.e., the date on which the sale deed in question was executed. Learned counsel submitted that the glaring discrepancy in the compliant which would show the falsity of the allegation is the fact that it has only been stated that on the stamp paper, the opposite party no. 2 was made to put his signature and there is no mentioning with regard to the opposite party no. 2 being taken to the office of the District Sub Registrar for registry of the document. It was submitted that from the registered document itself, it is clear that the opposite party no. 2 had presented himself in the office where his photograph was taken but there being not even a whisper that he was forcibly taken to the office of the District Sub Registrar, coupled with the fact that before the District Sub Registrar, the transferee is always

asked as to whether he had received the full money or whether he had willingly executed the sale deed, the presumption, in law, would be that there was no illegality in such registration of the sale deed. Moreover, learned counsel submtited that after two months of the alleged occurrence, which is said to have taken place from 26.04.2014 to 30.04.2012, Title Suit No. 280 of 2012, has been filed by the opposite party no. 2 against the petitioners on 18.06.2012 for cancellation of the sale deed. It was submitted that thereafter in October, 2012, a complaint case was filed which was converted into a police case alleging kidnapping of the opposite party no. 2, which the police had found to be untrue and had submitted final form but on the Protest-cum-Complaint Case No. 1447 of 2013, the Court below had taken cognizance against the petitioners which is under challenge in the present application. It was further submitted that even the petitioner no. 1 has filed Complaint Case No. 1314 of 2013, against the opposite party no. 2 and his brother alleging lodging of a false case against him and also cheating and forgery.

5. Learned A.P.P. and learned counsel for the opposite party no. 2 submitted that the Court, upon enquiry, has taken cognizance. Learned counsel for the opposite party no. 2 further added that the opposite party no. 2 was abducted and kept against

his will by the petitioners and they have also managed to get the ancestral lands of the complainant registered in their favour beyond the share of the opposite party no. 2. However, on a direct query of the Court to learned counsel for the opposite party no. 2 as to now come an amount of Rs. 10 lakhs was shown transferred in the Bank account on 28.04.2012, which is the date of the registration of the sale deed and which the police have also found to be true, there was no explanation. Further, on a query as to how the present case was maintainable when four months prior to filing of the case, the opposite party no. 2 has already filed a suit for cancellation of the sale deed, which makes it a purely civil dispute, learned counsel again had no answer.

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.

7. In this connection, it would be useful to refer to the decision 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 serious 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. In the opinion of the Court, the present case falls under category 7 set out in paragraph no. 102 of the aforesaid judgment in the case of **Bhajan Lal** (supra).

9. Moreover, the Court would also refer to the judgment of the Hon'ble Supreme Court in the case of State of Karnataka v. L. Muniswamy and others reported as 1977(2) SCC 699, where at paragraph no. 7, it has been held 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......"

10. In the aforesaid background, the Court finds that the prosecution is *mala fide*, untenable and solely with the intention to harass the petitioners.

11. Accordingly, the application is allowed. The entire Complaint Case No. 1447 of 2013, along with the order dated 06.06.2014 by which cognizance has been taken against the petitioners under Sections 384, 342 and 120B of the Indian Penal Code, stands quashed.

(Ahsanuddin Amanullah, J)

P. Kumar

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