

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No. 20268 of 2013

Arising Out of Complaint Case No.-484 Year-2011 Thana- NAWADAH COMPLAINT
CASE District- Nawada

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1. Chhatrabali Singh S/o Late Jangi Singh Resident of Village- Bagubigha, P.S.- Belaganj, District- Gaya.
 2. Kamla Devi W/o Chhatrabali Singh Resident of Village- Bagubigha, P.S.- Belaganj, District- Gaya.
 3. Mahesh Pandey S/o Late Jamuna Pandey Resident of Village- Neuri, P.S.- Belaganj, District- Gaya.
 4. Ganauri Pandey S/o Late Jamuna Pandey Resident of Village- Neuri, P.S.- Belaganj, District- Gaya.
 5. Arbind Pandey S/o Late Jamuna Pandey Resident of Village- Neuri, P.S.- Belaganj, District- Gaya.
 6. Nagendra Pandey S/o Late Guni Pandey Resident of Village- Neuri, P.S.- Belaganj, District- Gaya.
 7. Mokhtar Singh S/o Late Rambriksh Singh Resident of Village- Neuri, P.S.- Belaganj, District- Gaya.
 8. Umesh Paswan S/o Rambalak Paswan Resident of Village- Neuri, P.S.- Belaganj, District- Gaya.
 9. Nirmala Devi W/o Arbind Pandey Resident of Village- Neuri, P.S.- Belaganj, District- Gaya.

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr. Sheikh Arkan Ahmad, Advocate
For the State	:	Mr. Aditya Narayan Singh-1, A.P.P.
For the Opposite Party No. 2	:	Mr. S. N. Choudhary, Advocate

CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN
AMANULLAH

ORAL JUDGMENT

Date : 25-01-2019

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 (hereinafter referred
to as the 'Code') for the following relief:



“This is an application for quashing the order dated 3.10.2012 passed in complaint case no. -484/11/2423/12 by Sri Girish Mishra the learned Judicial Magistrate 1st Class Nawada whereby and where under cognizance has been taken against the accuse persons for the offences u/s 341/323/380 of the Indian Penal Code.”

3. The allegation against the petitioners is that they had forcibly broken into the house of the opposite party no. 2, demanding extortion of Rs. 20,000/- and the petitioner no. 1 taking Rs. 2,000/- from the pocket and also of general assault. It is further alleged that five boxes containing Rs. 10,000/- cash; gold worth Rs. 1,25,000/-; silver worth Rs. 20,000/-; clothes worth Rs. 20,000/- were also taken away and the womenfolk took away Television worth Rs. 10,000/- and C.D. worth Rs. 5,000/-, the total worth of goods and articles taken being Rs. 1,90,000/-. It was further alleged that the kerosene in the house of the opposite party no. 2 was sprinkled by the accused and the house was set on fire resulting in damage of Rs. 30,000/- of furniture and foodgrains.

4. Learned counsel for the petitioners submitted that basically there is civil dispute between the parties who are agnates. It was submitted that earlier also in the year 2009, a complaint was filed by the opposite party no. 2 against the petitioners no. 1, 3, 4, 5 and 6 which resulted in conviction, but in appeal, the concerned petitioners were acquitted. It was submitted



that in the same also, the allegation was that there was an agreement for sale deed executed but the entire money was not paid and later the registration receipt was also stolen without making good the balance amount. Learned counsel submitted that from the very tenor of the allegation in the complaint, it is apparent that the same is highly improbable and unbelievable. Learned counsel submitted that the allegation that female members also came and took part in breaking down the door and then looting all articles, besides being exaggerated and unbelievable, is also falsified by the fact that if in the past, there was dispute relating to sale of land between the parties, there being no circumstances enumerated in the complaint as to why extortion was being demanded and that too only of Rs. 20,000/- for which seven persons would come, clearly shows that the complaint itself is false and frivolous. It was further submitted that the time of occurrence being shown between 7.00 P.M. to 9.00 P.M. in mid June, 2011 is relevant for the reason that in June, which is a warm season, in a village, there is activity all around and people are expected to be there, but nobody coming either to save the complainant or prevent the petitioners from committing the crime or even apprehending them after the crime, especially in view of the allegation that the house was set on fire but there



being no mentioning or supporting evidence to show what the co-villagers did to douse the fire, is a clear indication of the falsity of the allegations.

5. Learned A.P.P. submitted that the Court has taken cognizance on the basis of the statement of the witnesses. However, on a query of the Court as to whether from the tenor of the complaint and the past history of enmity clearly indicating land dispute between the parties, which in effect would indicate abuse of the process of the Court for which the Court may interfere under its inherent power under Section 482 of the Code, learned A.P.P. was not in a position to controvert or submit otherwise.

6. Learned counsel for the opposite party no. 2 submitted that the petitioners are strong men and they are trying to somehow grab the land of the opposite party no. 2 by show of strength and earlier also on a complaint filed, they were convicted and thereafter again in the year 2011, they had tried to grab the land of the opposite party no. 2. Learned counsel submitted that *prima facie*, from a perusal of the complaint and statement of the witnesses, a case is made out. However, on a query of the Court to learned counsel as to whether mere perusal of the complaint and statement of witnesses would prevent the Court under its inherent



power under Section 482 of the Code to interfere for the purpose of preventing abuse of the process of the Court and securing the ends of justice, learned counsel could not counter the same.

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. From a totally myopic and hyper technical point of view, the submissions of learned counsel for the opposite party no. 2, that from perusal of the complaint itself and statement of enquiry witnesses, a case is made out, appears to be attractive at first look. However, a closer scrutiny, especially in the background of past established enmity, that too relating to land dispute, indicates that the allegations made cannot be accepted at face value. Further, the allegations that nine persons including two women would come and commit the alleged crime in the manner described i.e., breaking the door, taking away of articles and Television and only for a demand of Rs. 20,000/-, does not appear to be believable. The Court also finds substance in the submissions of learned counsel for the petitioners that at 7.00 P.M. in the village, in the month of June, no co-villagers coming forward to prevent the crime or help the opposite party no. 2 or even make any effort to put out the fire and most importantly, there being nothing on record or evidence



furnished to show that there was any fire, happening of such incident appears to be fictitious. Also no report with regard to any injury or damage caused to the house of opposite party no. 2 being brought on record by the opposite party no. 2, also indicates that in reality no such incident took place. At this juncture, the Court may also indicate that if at all the allegations are true, it would in fact amount to dacoity, which is a serious and heinous crime and it cannot be accepted that when such a crime is reported to the local police station, it will not be registered. On the contrary, such a heinous crime is directly brought to the notice of the Superintendent of Police of the district concerned and, thus, it cannot be believed that even in such a case, casually the police would refuse to register a case and in such background, lodging of the complaint case itself raises serious doubt with regard to the *bona fide* and real intention of the opposite party no. 2 in filing a complaint case.

8. Thus, the Court finds that the real intention behind the filing of the complaint is to exert some undue pressure, for whatever benefit the opposite party no. 2 may want to derive with regard to the dispute between the parties which relates to land and, thus, purely is civil in nature. In this connection, the Court would refer 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, wherein at paragraph no. 102 categories are defined where the Court under Section 482 of the Code should exercise its inherent power. 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 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.”

9. The Court finds that the present case comes under category-7 of the said judgment in the case of **Bhajan Lal** (supra).

10. Further, the 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.....”



11. Moreover, the Hon'ble Supreme Court in the case of **State of Karnataka v. L. Muniswamy** reported as (1977) 2 SCC 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.....”

12. From the aforesaid, in the opinion of the Court, the present is a case which has been filed for oblique reasons only to harass the petitioners and allowing the same to continue and the petitioners to face trial would clearly be an abuse of the process of the Court. Thus, in the facts and circumstances of the case, the Court finds that interference is required for securing the ends of the justice.

13. Accordingly, the application is allowed. The entire proceeding arising out of Complaint Case No. 484 of 2011/2423



of 2012, including the order dated 03.10.2012 by which cognizance has been taken against the petitioners, stand quashed.

14. Let the lower Court records be returned forthwith.

(Ahsanuddin Amanullah, J.)

P. Kumar

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