

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No. 27410 of 2013

Arising Out of Complaint Case No.-495 (C) Year-2010 Thana- PATNA COMPLAINT CASE
District- Patna

Abhay Kumar Sinha, Son of Sri Akhilesh Prasad, Resident of Hanuman
Nagar, New Punaichak, P.S.- Shastri Nagar, District- Patna.

... .. Petitioner/s

Versus

1. The State of Bihar
2. Durga Nath Mishra, Son of Late K.K. Mishra, Resident of Arya Panna
Apartment, Road No.2, Patel Nagar, P.S.- Shastri Nagar, District- Patna.

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Bhola Prasad and
Mr. Indrajeet Kumar, Advocates
For the Opposite Party/s : Mr. Nagendra Prasad, A.P.P.

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

ORAL JUDGMENT

Date : 25-01-2019

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

2. Despite service of notice on Opposite Party No. 2,
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 for the following relief:



“That the present petition is being filed for quashing of the order dated 31.08.2010 whereby and where under the learned J.M. 1st Patna has taken cognizance against the petitioner under sec 506, 120(B) of the Indian Penal Code in Complaint Case No. 495 (C)/10 registered for the alleged offences punishable under sec 406,420,506 and 120(B) of the Indian Penal Code.”

4. The Opposite Party No. 2 filed Complaint Case No. 495(C) of 2010 against the petitioner and four others in which the allegation is against other co-accused that though the money was taken by them for purchase of flat by the Opposite Party No. 2, but when he went to the spot, it was found that the particular flat i.e. B-34 in Bimla Tower new Punaichak, Patna was sold to the petitioner, who was living there.

5. Learned counsel for the petitioner submitted that he is the *bona fide* purchaser of the flat in question under a sale deed by the owner of the land which was duly registered on 26.12.2007. In support of such contention learned counsel referred to Annexure-3, which is copy of the registered sale deed. Learned counsel submitted that the entire grievance of the Opposite Party No. 2 relates to the other co-accused who are the owners/developers of the building but does not concern the petitioner and he has absolutely no role with regard to whatever grievance the Opposite Party No. 2 may have and he is residing peacefully with his family



in the said flat. Learned counsel submitted that the present case, as far as he is concerned, is absolutely false and frivolous without there being any criminal complicity attributable to him.

6. Learned A.P.P. fairly submitted that as far as the petitioner is concerned, no criminal act is made out against him from the entire reading of the complaint case.

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. The petitioner, being the purchaser, who had got registered sale deed of the flat in question in his favour, that too, from the owner of the land, cannot be said to have committed any illegality, much less relating to the grievance raised by the Opposite Party No. 2, which is against the other four co-accused. Merely because he is now occupying and living in the flat, which the Opposite Party No. 2 claims was promised to him by the other co-accused, will not make the petitioner party to or an accomplice in whatever criminal act may have been done by the other co-accused. Moreover, in the instant case, if at all the complainant desires to get the petitioner evicted after getting his right declared with regard to the flat in question, the same can only be through a Civil Court of competent jurisdiction. Thus, the Court finds that the instant case is squarely



covered under categories 1 and 7 of the categories enumerated by the Hon'ble Supreme Court at paragraph no. 102 in the case of **State of Haryana v. Bhajan Lal** reported as **1992 Supp (1) SCC 335**, which 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. In the present case, the Court finds that the prosecution against the petitioner is *mala fide*, untenable and solely intended to harass the petitioner.

9. For reasons aforesaid, the application is allowed. The entire criminal proceeding arising out of Complaint Case No. 495 (C) of 2010 including the order dated 31.08.2010 by which cognizance has been taken under Sections 506 and 120B of the Indian Penal Code, as far as it relates to the petitioner, stand quashed.



10. The lower Court records be returned to the Court
concerned forthwith.

(Ahsanuddin Amanullah, J.)

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