

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.82288 of 2019

Arising Out of PS. Case No.-42 Year-2015 Thana- DARBHANGA COMPLAINT CASE
District- Darbhanga

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1. Rajiv Prasad Son of J.N. Prasad Resident of 102, Jagdish Enclave, Exhibition Road, P.S. Gandhi Maidan, District - Patna.
 2. Jaswant Surana @ Jaswant Singh Surana Son of Narendra Singh Surana @ Narendra Singh Resident of Sarswati Aparatment, 5 Sailo Kr Mukerjee Road, P.S. Golabari, District - Howrah, West Bengal -711101.
- Petitioners

Versus

1. The State of Bihar
 2. Ganesh Jha Son of Late Dashrath Jha Resident of Village - Mahinam, P.S. - Bahera, District - Darbhanga.
- Opposite Party

Appearance :

For the Petitioners : Mr.Kumar Kaushik, Advocate
For the Opposite Party : Mr.Aditya Narayan Singh.1, Addl Public Prosecutor

CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR SINGH
ORAL JUDGMENT

Date : 28-07-2022

Heard learned counsel for the petitioner and the State.

Despite valid service of notice, no one appears for opposite party no.2.

This application has been filed for quashing the order dated 22.10.2019, passed by the Additional Chief Judicial Magistrate, Benipur (Darbhanga) by which petitioners' discharge petition filed under section 239 of the Cr.P.C. for discharging them from offence punishable under sections 323, 341, 504 and 379 of the Indian Penal Code in connection with Tr No. 384 of 2019 (Cr



No. 42 of 2015 dated 23.3.2015) has been rejected by the Court below.

Prosecution case in short is that while complainant Ganesh Jha was going from Benipur to Darbhanga, accused persons intercepted him on the way. Thereafter, petitioner no.2 threatened him to kill as he did not file compromise petition, whereas petitioner no. 1 took out a revolver and asked the complainant to put his signature on two blank papers. Thereafter the latter signed the papers out of fear which were kept by petitioner no.1. It is further alleged that petitioner no.2 snatched a golden chain worth Rs.54,000/- from the complainant. Thereafter petitioners fled away.

On the basis of complaint, complainant was examined on solemn affirmation and in an enquiry under section 202 of the Cr.P.C. the witnesses were examined and finally the Chief Judicial Magistrate, Benipur finding the case to be prima facie true issued process against them for facing trial for offences punishable under sections 323, 341, 504 and 379 of the IPC. Thereafter, petitioners assailed the order taking cognizance dated 20.7.2015, passed by the Additional Chief Judicial Magistrate by way of filing Cr. Revision No. 707/2015 before the Sessions Judge, Darbhanga which was admitted for hearing but was finally dismissed vide



order dated 6.1.2018 with an observation that the petitioners may agitate the matter at the time of framing of charge.

Learned counsel for the petitioners submits that petitioner no.1 was the Assistant Vice President Sales, whereas petitioner no.2 was the Deputy General Manager, Sales in Lafarge India Private Limited Company; now known as 'Nuvoco Vistas Corp. Ltd'. On 27.8.2005, the Company appointed Ms Bhagwan Trading as Company's stockiest which was subsequently converted into a partnership firm with effect from 1.4.2010 under the name and style of Bhagwan Trading with Anand Kumar Jha, Ganesh Jha (the complainant) and Ramesh Jha as partners. It is the case of the petitioners that from April, 2014 there was some curtailments of supply to the firm of the complainant and because of the same he became infuriated and on 7.7.2014 at about 9.30 pm Ganesh Jha and Dinesh Jha came to the office of the informant and threatened him of dire consequences if the required materials were not supplied to him by the Company. For this act of intimidation, Station Diary Entry no. 282 of 2014 dated 10.7.2014 was made to the Leharisarai Police Station. Complainant one after another sent two legal notices to the petitioners dated 11.7.2014 and 18.7.2014. Thereafter, the company terminated its business relationship with the firm of the complainant vide letter dated



18.7.2014 (Annexure P6). Now, the complainant sent third legal notice dated 21.7.2014 (Annexure P5) to the petitioners raising grievance against the termination of business relationship between the complainant and the Company. It is the case of the petitioners that the petitioners replied to the aforesaid legal notices through their advocate denying all the accusations levelled against them. However, in retaliation the complainant filed instant complaint, namely, CR No. 176 of 2014 alleging that due to stoppage of supply by the petitioners' Company, firm of the complainant incurred a loss of about Rs.20 lacs. It is further submitted that the petitioners filed an application under section 438 Cr.P.C. for grant of anticipatory bail in the aforesaid complaint. During pendency of the said application, parties resolved their dispute and jointly filed a compromise petition dated 15.1.2015 (Annexure P9) in the Court of the learned Sessions Judge, Darbhanga. Accepting the factum of compromise, petitioners were granted anticipatory bail vide order dated 20.1.2015 (Annexure P10). It is further submitted that surprisingly, instead of withdrawing the complaint in terms of conditions of the compromise petition, complainant wrote a letter dated 28.1.2015 to the petitioner no.1 raising several other demands including withdrawal of the order by which his dealership agreement was terminated. It is further submitted that



on refusal by these petitioners, complainant lodged instant complaint falsely implicating the petitioners only with a view to put pressure upon them to restore the dealership licence and thus the instant complaint is malicious, frivolous and vexatious instituted for wreaking vengeance against the accused persons and the continuation of the same would only be an abuse of the process of law. However, vide order dated 20.7.2015 the Additional Chief Judicial Magistrate took cognizance of the offence which was assailed by the petitioners in Cr. Revision no. 707/2015 which was dismissed by the Sessions Judge, Darbhanga vide order dated 6.1.2018 with an observation that the petitioners may agitate the matter at the time of framing of charge. Petitioners agitated it at the time of framing of charge but the same has not been considered by the Additional Chief Judicial Magistrate, Benipur.

Learned counsel for the State submits that impugned order is just and proper and there is no illegality and infirmity in the impugned order, as such, no interference is warranted at this stage by this Court exercising jurisdiction under section 482 of the Cr.P.C.

Taking into consideration rival submissions of the parties and on perusal of the material available on the record, this Court is in agreement with the submissions made by learned



counsel for the petitioners. On minutely going through the records of the case, it is apparent that no sooner petitioner's reduced the supply, complainant and his office bearers came to the petitioners' office and threatened them of dire consequences for which Station Diary Entry no. 282 of 2014 dated 10.7.2014 was made to the Leharisara Police Station. In retaliation, complainant one after another sent two legal notices to the petitioners dated 11.7.2014 for restoration of flow of supply and 18.7.2014 and when finally the petitioners cancelled the dealership relation with them, instant complaint was lodged. Thus, sequence of events clearly indicates that when the supply to the Company was reduced by the petitioners, they first intimidated them and when Sanha entry in this regard was made with the police, complainant issued notices to the petitioners putting pressure upon the petitioners to restore the supply and when dealership licence was cancelled by the petitioners, two complaints including the present one was lodged by him against the accused persons.

So far as legal position of quashing of the criminal proceedings is concerned, the Hon'ble Apex Court time and again carved out jurisdiction of the High Court under section 482 of the Code of Criminal Procedure. Reference in this regard can be made to the case of **State Of Haryana and ors Vs Ch. Bhajan Lal and**



ors, reported in **1992 AIR 604, 1990 SCR Supl. (3) 259** in which it has already been held that the inherent jurisdiction of the High Court under section 482 of the Cr.P.C. can be exercised to quash the proceeding in an appropriate case either to prevent the abuse of the process of any Court or adhere to secure ends of justice. Relevant paragraph 19 of the judgment is as follows:-

“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 noncognizable 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.”



In view of the discussions made above as well as the pronouncement of law by the Hon’ble Supreme Court in case of **Ch. Bhajan Lal (supra)**, I find that the present case fits in Category No.7 of the aforesaid judgment. In result, impugned order dated 22.10.2019, passed by learned Additional Chief Judicial Magistrate, Benipur (Darbhnga) and subsequent criminal proceeding, are hereby quashed.

This application stands allowed in the aforesaid terms.

(Prabhat Kumar Singh, J)

Shashi

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	04.08.2022
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