

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.8839 of 2017

Arising Out of PS. Case No.-302 Year-2015 Thana- BIHAR District- Nalanda

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1. Lalita Devi Wife of Haro Prasad
 2. Haro Prasad Son of Late Sukar Mahto (since deceased)
- Both residents of Village/Mohalla - Sundar Garh, Bhaisasur, Biharsharif,
P.S. - Biharsharif, District - Nalanda.

... .. Petitioner/s

Versus

1. State Of Bihar
2. Indu Bhushan Prasad Singh Son of Late Baleshwar Prasad Singh Resident of
Village/Mohalla - Sundargarh Kachahari Road, Bhainsasur, Biharsharif, P.S.
- Biharsharif, District - Nalanda.

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr.Rajendra Prasad, Sr. Advocate Mr.Pramod Kumar, Advocate Mr. Ritesh Kumar, Advocate
For the State	:	Mr.Sri Matloob Rab, Advocate
For Opposite Party no.2	:	Mr. Vinay Kumar, Advocate Mr. Manoj Madhav, Advocate

CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH

ORAL JUDGMENT

Date : 20-09-2023

1. The present petition has been filed for
quashing the order dated 11.09.2015, passed by
the learned Chief Justice Magistrate, Nalanda at
Biharsharif in Bihar P.S. Case No.302 of 2015, G.R.



No.2508 of 2015, whereby and whereunder cognizance has been taken under Sections 341, 323, 504, 337/34 IPC qua the petitioners herein.

2. At the outset, it is submitted that the petitioner no.2 has since died, hence criminal proceedings have stood abated qua him and as far as the petitioner no.1 is concerned, she is an old lady, i.e. wife of the petitioner no.2, aged about 79 years old.

3. The case of the prosecution, in brief, according to the first information report dated 01.07.2015 is that on 30.06.2015, in the evening at about 5:30 pm, while the informant along with his wife was sitting at the door of his house, the petitioner no.2 along with his wife, i.e. the petitioner no.1 had arrived there and started abusing them. It is also alleged that the accused persons had then engaged in brick bating resulting in the informant and her wife sustaining injuries.

4. The learned counsel for the petitioner no.1 has submitted that a bare perusal of the FIR would show that a general and omnibus allegation



has been levelled qua the petitioner no.1 and even otherwise, the injury report of the informant and his wife would show that the injuries sustained by them have been found to be simple in nature, which, at best, are attributable to the petitioner no.2, who is no longer alive.

5. The learned counsel appearing for the opposite party no.2 has not been able to show from the records much less from the FIR in question that the petitioner no.1 has also been alleged to have engaged in any specific overtact.

6. I have heard the learned counsel for the parties and perused the material on record as well as the case-diary from which it is apparent that as far as the petitioner no.1 is concerned, there is no material whatsoever to suggest that she had engaged in any specific overtact, leading to infliction of simple injuries upon the informant and his wife.

7. At this juncture, it would be relevant to refer to a judgment rendered by the Hon'ble Apex Court in the case of ***State of Haryana v. Bhajan***



Lal, reported in **AIR 1992 SC 604**, paragraph no.108 whereof is reproduced hereinbelow:-

“108. 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.”

8. This Court finds that the present case squarely falls within the purview of clauses 1, 3 and 5 of paragraph no.108 of the aforesaid



judgment rendered by the Hon'ble Apex Court in the case of **Bhajan Lal** (supra).

9. This Court further finds from a bare perusal of the impugned order dated 11.09.2015, passed by the learned Chief Judicial Magistrate, Nalanda at Biharsharif, by which cognizance has been taken for the offences alleged, qua the accused persons that the same is cryptic, unreasoned and depicts complete non-application of mind, hence the same is not sustainable in the eyes of law. Reference in this connection be had to the judgment rendered by the Hon'ble Apex Court in the case of **Pepsi Foods Ltd. v. Special Judicial Magistrate**, reported in **(1998) 5 SCC 749** and the one rendered in the case of **Mehmood Ul Rehman v. Khazir Mohammad Tunda**, reported in **(2015) 12 SCC 420**.

10. Having regard to the facts and circumstances of the case and for the reasons mentioned hereinabove, this Court finds that the order dated 11.09.2015, passed by the learned Chief Judicial Magistrate, Nalanda at Biharsharif in



Bihar P.S. Case No.302 of 2015, G.R. No.2508 of 2015 is not sustainable in the eyes of law, hence is quashed qua the petitioner no.1.

11. The petition stands allowed.

(Mohit Kumar Shah, J)

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AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	22.09.2023
Transmission Date	NA

