

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.20181 of 2015

Arising Out of PS. Case No.-385 Year-2010 Thana- MOTIHARI TOWN District- East
Champaran

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Surendra Tiwari @ Surendra Nath Tiwari S/o Sri Baidyanath Tiwari Resident
of Mohalla New Bus Stand, Near Pashchimi Gate, Bettiah, P.S. Bettiah Town,
District West Champaran.

... .. Petitioner/s

Versus

1. State Of Bihar and Anr
2. Prabhakar Kumar Posted in Indian Army S/o Sri Birendra Pandey Resident
of Mohalla Durgasthan to the west of Muffasil P.S., P.S. Motihari Town,
District East Champaran.

... .. Opposite Party/s

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Appearance :

For the Petitioner/s : Mr.Umesh Chandra Verma
For the Opposite Party/s : Mr. M. Rub APP

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CORAM: HONOURABLE MR. JUSTICE SANDEEP KUMAR
ORAL ORDER

5 13-02-2023 Heard learned counsel for the petitioner and learned

A.P.P. for the State. None has appeared for the Opposite Party

No. 02 despite service of notice.

This is an application for quashing the order dated
04.07.2013 passed by the learned Chief Judicial Magistrate,
Sadar, East Champaran at Motihari in Trial No. 143 of 2015
arising out of Motihari Town P.S. Case No. 385 of 2010 by
which the cognizance has been taken against the petitioner and
others.

The Motihari Town P.S. Case No. 385 of 2010 has
been filed by the informant against his father-in-law and his



brothers-in-law alleging that they entered his house, snatched his laptop caught hold of his hands, pointing Revolver on him and took-out Rs. 45,000/- from his pocket. They further demanded Rs. 3,00,000/- from him and said that if the money is not paid within two days, then the informant shall be eliminated.

The case was investigated and charge-sheet has been submitted against the petitioner and others (Samant Tiwari, Shakti Tiwari and Sonu Tiwari) and thereafter cognizance has been taken.

It is contended by the learned counsel for the informant that the informant is son-in-law of the petitioner and the present case has been filed with *mala-fide* reasons as one Complaint Case No. 2258-C of 2007 was filed by Sandeepa Devi, the daughter of the petitioner, against the informant and his family members.

He further submits that one Maintenance Case No. 38-M of 2009 was also filed by Sandeepa Devi in the Court of learned Principal Judge, Family Court, East Champaran at Motihari against the informant and the present prosecution is nothing but a counter-blast of the aforesaid cases.

The learned APP has supported the cognizance order and has submitted that the materials on which the petitioner



relies cannot be looked into by this Court at this stage and the petitioner may be directed to raise all his grievances at the time of framing of charge.

I have considered the submissions of the parties. The materials produced by the petitioners, at this stage can be looked into and this Court should not wait for the framing of charge.

The Hon'ble Apex Court in the Case of ***Ashok Chaturvedi & Ors Vs Shitul H. Chanchani & Anr reported in (1998) 7 SCC 698*** in paragraph No. 5 has held as follows:-

“5. But the question that yet remains for consideration is whether the allegations made in the petition of complaint together with statements made by the complainant and the witnesses before the Magistrate taken on their face value, do make the offence for which the Magistrate has taken cognizance of? The learned counsel for the respondent in this connection had urged that the accused had a right to put this argument at the time of framing of charges, and therefore, this Court should not interfere with the order of the Magistrate taking cognizance, at this stage. This argument, however, does not appeal to us inasmuch as merely because an accused has a right to plead at the time of framing of charges that there is no sufficient material for such framing of charges as provided in [Section 245](#) of the Criminal Procedure Code, he is debarred from approaching the court even at an earliest point of time when the Magistrate takes cognizance of the offence and summons the accused to appear to contend that the very issuance of the order of taking cognizance is invalid on the ground that no offence can be said to have been made out on the allegations made in the complaint petition. It has been held in a number of cases that power under Section 482 has to be exercised sparingly and in the interest of justice. But allowing the criminal proceeding to continue even where the allegations in the complaint petition do not make out any offence would be tantamount to an abuse of the process of court, and therefore, there cannot be any dispute that in such case power under Section 482 of the Code can be exercised. Bearing in mind the parameters laid down by this Court in several decisions for exercise of power under Section 482 of the Code, we



have examined the allegations made in the complaint petition and the statement of the complainant and the two other witnesses made on oath before the Magistrate. We are clearly of the opinion that the necessary ingredients of any of the offences have not been made out so far as the appellants are concerned. The petition of complaint is a vague one and excepting the bald allegation that the shares of the complainant have been transferred on forged signatures, nothing further has been stated and there is not an iota of material to indicate how all or any of these appellants are involved in the so-called allegation of forgery. The statement of the complainant on oath as well as his witnesses do not improve the position in any manner, and therefore, in our considered opinion, even if the allegations made in the complaint petition and the statement of the complainant and his witnesses are taken on their face value, the offence under Sections 406, 420, 467, 468 and 120-B of the Penal Code, 1860 cannot be said to have been made out. This being the position, the impugned order of the Magistrate taking cognizance of the offence dated 5.2.1996 so far as it relates to the appellants cannot be sustained and the High Court also committed error in not invoking its power under Section 482 of the Code. In the aforesaid premises, the impugned order of the High Court as well as the order of the Magistrate dated 5.2.1996 taking cognizance of the offence as against the appellants stand quashed.”

Moreover, from the materials also, it is also disclosed that the *mala-fide* prosecution initiated by the informant was wreaking vengeance upon the petitioner and his family members because Sandeepa Devi had filed a complaint case and a maintenance case against the informant.

Considering the law laid down by the Supreme Court in case of ***State of Haryana Vs. Bhajanlal reported in 1992 SC 604*** and also in the case of ***Ashok Chaturvedi and others Vs. Shitul H. Chanchani and Anr. (supra)***, this application is allowed.



The entire prosecution of Motihari Town P.S. Case No. 385 of 2010 and other accused (Samant Tiwari, Shakti Tiwari and Sonu Tiwari) who have not approached this Court, is hereby quashed.

(Sandeep Kumar, J)

Vikas/Shishir

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