

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.474 of 2016

Arising Out of PS. Case No.-365 Year-2013 Thana- MADHEPURA COMPALINT CASE
District- Madhepura

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Arun Choudhary Son of Nunulal Choudhary resident of Village- Sri Rampur
PS.- Parbatta District Khagaria, Presently posted as Assistant Sub-Inspector at
Gamharia Police Station, District- Madhepura

... .. Petitioner/s

Versus

1. State Of Bihar
2. Lal Yadav son of Yadunandan Yadav resident of Village- Jiwachhpur, P.S.
Gamharia, District Madhepura

... .. Opposite Party/s

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Appearance :

For the Petitioner/s : Mr.Sunil Kumar Singh
For the Opposite Party/s : Mr.R.S.Choudhary, App

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CORAM: HONOURABLE MR. JUSTICE SANDEEP KUMAR
ORAL ORDER

7 16-08-2023 Heard learned counsel for the petitioner and learned
counsel appearing on behalf of the State. However, none
appears for the opposite party No. 2 though Vakalatnama has
been filed on behalf of the opposite party No. 2.

2. This is an application has been filed for quashing
the order dated 22.09.2014 passed by the learned Judicial
Magistrate 1st Class, Madhepura in Complaint Case No. 365
C/13 whereby and whereunder the learned Magistrate has taken
cognizance against the petitioner under Sections 323/504 and
341 of the Indian Penal Code.

3. The prosecution in short is that on 01.04.2013 at 10
A.M. accused Nos. 2 to 5 came at the house of the complainant
and asked him to go to the police station and when the



complainant went with them, the petitioner told that there is warrant against him and so he, would have to go to Jail on which the complainant replied that the warrant isailable and bailor is ready and also he has filed Cr. Rev. in the Hon'ble High Court in which 02.04.2013 is the date fixed for hearing and on this, the petitioner started to abuse whereas other co-accused persons assaulted and stopped him from making argument. It is further alleged that the petitioner demanded Rs. 5000/- for releasing the complainant on bail to which he protested and denied to pay and thereupon his body was searched and he was put in the Hajat after taking of Rs. 1500/- from his pocket by the petitioner. It is further alleged that on the next day i.e. on 02.04.2013 the complainant was brought to the court and from where he was released on bail and then after releasing when he demanded money from the petitioner then he threatened him for implicating in other cases and hence the instant case was lodged against the petitioner and other police officials.

4. Learned counsel for the petitioner submits that the petitioner is an Assistant Sub-inspector of police and was posted at Gamharia police station in the District of Madhepura, where the instant occurrence alleged to have taken place.

5. It is further submitted that the complainant and his



other family members had been made accused of Gamharia P.S. Case No. 22/09, G.R. No. 451//09 under sections 147, 149, 341, 323, 307, 380 and 427 of the I.P.C. and they were evading arrest in spite of warrant of arrest issued against them and as such the informant of the said case namely Mushahru Yadav filed petition before the Superintendent of Police, Madhepura for taking required action against them. Thereafter, on the said petition of the informant Mushahru Yadav of Gambaria P.S. case No. 22/09, on 25.03.2013, the S.P. Madhepura directed the S.H.O. Gamharia to arrest the accused persons of the said case if warrant is issued against them. Then, petitioner along with other police force on 01.04.2013 at 17:30 hours proceeded to village Toka Jivachhapur to arrest the complainant and other accused persons which would be evident from the daily police station diary dated 01.04.2013.

6. It is further submitted that on perusal of the aforesaid police station diary it would appear that when the police force including the petitioner on 01.04.2013 at 19:30 hours reached at the house of the complainant then the complainant called 30 to 40 villagers at his house who surrounded the police force and interfered them in discharge of their official duties and they were also ready to assault the



police force for which the petitioner recorded a *Sanha* and there upon more police force came and arrested the complainant and brought him to the police station from where on 02.04.2013 he was remanded to judicial custody.

7. It has been submitted by the learned counsel for the petitioner that after the accused Lal Yadav came out of the jail on bail in connection with the cases registered against him, he has filed the present case with a view to wreak vengeance against the petitioner. He also submits that the Hon'ble Supreme Court in case of ***Mahmood Ali & Ors Vs. State of U.P & Ors*** passed in ***Criminal Appeal No. 2341 of 2023*** has held as under:-

“(12) At this stage, we would like to observe something important. Whenever an accused comes before the Court invoking either the inherent powers under Section 482 of the Code of Criminal Procedure (CPC) or extraordinary jurisdiction under Article 226 of the Constitution to get the FIR or the criminal proceedings quashed essentially on the ground that such proceedings are manifestly frivolous or vexatious or instituted with the ulterior motive for wreaking vengeance, then in such circumstances the Court owes a duty to look into the FIR with care and a little more closely. We say so because once the complainant decides to proceed against the accused with an ulterior motive for wreaking personal vengeance, etc.. then he would ensure that the FIR/complaint is very well drafted with all the



necessary pleadings. The complainant would ensure that the averments made in the FIR/complaint are such that they disclose the necessary Ingredients to constitute the alleged offence. Therefore, it will not be just enough for the Court to look into the averments made in the FIR/complaint alone for the purpose of ascertaining whether the necessary ingredients to constitute the alleged offence are disclosed or not. In frivolous or vexatious proceedings, the Court owes a duty to look into many other attending circumstances emerging from the record of the case over and above the averments and, if need be, with due care and circumspection try to read in between the lines. The Court while exercising its jurisdiction under Section 482 of the CrPC or Article 226 of the Constitution need not restrict itself only to the stage of a case but is empowered to take into account the overall circumstances leading to the initiation/registration of the case as well as the materials collected in the course of investigation. Take for instance the case on hand. Multiple FIRs have been registered over a period of time. It is in the background of such circumstances the registration of multiple FIRs assumes importance, thereby attracting the issue of wreaking vengeance out of private or personal grudge as alleged.”

8. From the reading of the complaint, it appears that this is a malicious prosecution initiated by the complainant which should be nipped at the bud. In view of the laws laid down by Hon’ble Supreme Court in case of *Mahmood Ali & Ors Vs. State of U.P & Ors (supra)*, this application is allowed.



9. Accordingly, order dated 22.09.2014 passed by the learned Judicial Magistrate 1st Class, Madhepura in Complaint Case No. 365 C/13 whereby and whereunder the learned Magistrate has taken cognizance against the petitioner under Sections 323/504 and 341 of the Indian Penal Code is hereby quashed only against this petitioner in the interest of justice.

(Sandeep Kumar, J)

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