

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.512 of 2022

Arising Out of PS. Case No.-75 Year-2019 Thana- BARSOI District- Katihar

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Bijay Kumar Mishra @ Vijay Mishra Son of Late Raghunath Mishra Resident
of Mohalla - Mirchai Bari, P.S. Katihar Sahayak, District- Katihar.

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Bimal Kumar, Advocate

For the Opposite Party/s : Mr. Arun Kumar, APP

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CORAM: HONOURABLE MR. JUSTICE RAJESH KUMAR VERMA
CAV JUDGMENT

Date : 27.09.2023

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

2. The present application has been filed for quashing
the order dated 09.03.2021 passed by learned Additional Chief
Judicial Magistrate VI, Katihar in connection with Barsoi P.S.
Case No. 75 of 2019. The learned Court below has been please
to take cognizance against the petitioner and one other accused
person under Sections 506, 353, 427, 166, 120(B)/34 of the
Indian Penal Code .

3. According to the prosecution case, the co-accused,
Rajendra Ravidas in intoxicated condition threw the records
from the table on the informant who was signing the order sheet
in his chamber and also threatened him for dire consequences.



4. Learned counsel for the petitioner submits that from perusal of the contents of the F.I.R it appears that while the informant was signing the order sheets of the records of the case in his chamber, his peon came in the chamber in drunken condition and threw the records on the ground and shouted that why he had issued show caused against him and why he was writing against the petitioner (then Nazeer). Thereafter, the peon threw the order sheets of some cases and threatened the informant of dire consequences and fled away from the chamber of the informant.

5. Learned counsel for the petitioner further submits that it is clear from the F.I.R itself that the petitioner was not present at the place of occurrence and there was no acquisition against the petitioner and co-accused, namely, Rajendra Ravidas only asked the informant that why he was writing against the petitioner. Even in this further statement, the informant uttered the same version and no allegation has been made against the petitioner.

6. Learned counsel for the petitioner further submits that even not a single judicial officer or staff of the concerned Court have supported the case of the prosecution and it is clear from the F.I.R itself that the petitioner was then Nazeer of the



Barsoi Civil Court and one of the peon, Rajendra Ravidas (who is co-accused in the present occurrence) had filed a complaint petition against the present informant before the learned District and Sessions Judge, Katihar on 25.03.2019 (Annexure 2) and the informant in retaliation has filed the present case on 30.03.2019 and the same was instituted on 01.04.2019.

7. Learned counsel for the petitioner further submits that no material has come during investigation against the petitioner except some outside witnesses who are not the employee of the Civil Court. The informant is judicial officer, as such without collecting the proper/ any material against the petitioner, the prosecution has submitted in mechanical manner charge sheet against the petitioner and the learned Magistrate without applying his judicial mind took cognizance in mechanical manner against the petitioner perhaps only on the ground that the informant is also a judicial officer.

8. Learned counsel for the petitioner submits that the present case is fully covered with the case of **Bhajan Lal reported in 1992 (supplementary) 1 SCC Page 335**, he has referred the paragraphs;

102 (3) Where the uncontroverted allegations made in the F.I.R 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.

(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 accused.

(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.

9. Learned counsel for the petitioner submits that in view of the aforesaid, the continuance of the present proceeding will cost loss and injury to the petitioner and as such for the end of the justice, it is just proper to set aside the order impugned which is not sustainable in the eye of the law as well as on the fact.

10. Learned Additional Public Prosecutor for the State opposes the prayer of the petitioner and submits that the



order impugned is correct and accordance with law and the petitioner may face the trial and prove his innocence in accordance with law.

11. In view of the aforesaid, the impugned order dated 09.03.2021 passed by learned Additional Chief Judicial Magistrate VI, Katihar in connection with Barsoi P.S. Case No. 75 of 2019 is not sustained in the eye of law and it is nothing but abuse of the process of law, is hereby set aside and the quashing application stands allowed.

(Rajesh Kumar Verma, J)

Vanisha/-

AFR/NAFR	NAFR
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