

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.7120 of 2023

Arising Out of PS. Case No.-216 Year-2019 Thana- SANDESH District- Bhojpur

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1. Suryakanti Devi Wife of Janardan Mishra R/V- Karman Tola, PS- Ara Nawada, Dist- Bhojpur, At present Village- Pinjori, P.S- Sandesh Dist- Bhojpur
 2. Arbind Mishra Son of Janardan Mishra R/V- Pinjori P.S - Sandesh Dist- Bhojpur

... .. Petitioner/s

Versus

1. The State of Bihar
2. Raunak Kumar Pandey Son of Santosh Pandey R/V- Surungapur, P.S- Sandesh Dist- Bhojpur

... .. Opposite Party/s

Appearance :

For the Petitioner/s :	Mr. Gopal Govind Mishra
For the Opposite Party/s :	Mr. Pranav Kumar
	Mr. Shantam Shivam
	Mr. Umesh Prasad

CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR SINGH
ORAL ORDER

3. 04-03-2024 Heard learned counsel for the petitioners, learned A.P.P. for the State and learned counsel appearing on behalf of opposite party no. 2.

2. These petitioners have approached this Court under Sections 482 of the Code of Criminal Procedure, 1973 (for short “Cr.P.C.”) for quashing the order dated 03.09.2020 passed by learned Judicial Magistrate 1st Class, Bhojpur, Ara (hereinafter referred to as “Magistrate”) in G.R. No. 4222 of 2019, arising out of Sandesh P.S. Case No. 216 of 2019, on the basis of



Complaint Case No. 932C of 2019. By this said order, the learned Magistrate, while exonerating other accused persons, took cognizance only against these petitioners for the offence under Sections 406, 504, 506 of the Indian Penal Code and directed for issuance of summons against them for their appearance.

3. The case of the complainant, in short, is that his mother was suffering from Cancer and she died on 07.02.2019 due to burn injury suffered in the course of cooking. The complainant further alleged that his mother kept ornaments worth Rs. 1,50,000/- and cash of Rs. 2,00,000/- in the custody of his maternal uncle and maternal grand mother (i.e. petitioners), but they refused to return the same to the complainant and also threatened him to kill.

4. Learned counsel for the petitioners submits that present case has been maliciously instituted only with an oblique motive and *malafide* intention just to harass and humiliate these petitioners. As a matter of fact, petitioner no. 1 namely Suryakanti Devi instituted a case, vide Sandesh P.S. Case No. 76/2019, under Sections 341, 323, 504, 498A, 302, 34 of the Indian Penal Code against informant and his family members and in retaliation, this false and concocted case has



been lodged. Petitioner no. 1 is maternal grandmother (नानी) and petitioner no. 2 is maternal uncle (मामा) of the complainant/informant. Learned counsel for the petitioners has also placed reliance on a judgment of the Hon'ble Supreme Court, reported in *AIR 1992 SC 604 (State of Haryana v. Bhajan Lal)* wherein Hon'ble Supreme Court has laid down certain parameters. The High Court can quash an FIR or a complaint in the exercise of its powers under "Article 226 of the Constitution of India or under Section 482 CrPC:

I. Where the allegations made in the FIR 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.

II. Where the allegations in the FIR and other materials accompanying the FIR do not disclose a cognizable offence justifying an investigation under section 156(1) of Cr.P.C. except an order of a Magistrate under section 155(2) Cr.P.C.

III. Where uncontroverted allegations in the FIR or the complaint and the evidence collected in support do not disclose the commission of any offence and make out a case against the accused.

IV. Where the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence.

V. Where the allegations made in the FIR or complaint are so absurd and inherently improbable that no prudent person can ever reach a just conclusion that there is sufficient ground for



proceeding against the accused.

VI. Where there is an express legal bar engrafted in the Cr.P.C. or the concerned Act to the institution of criminal proceedings or where there is a specific provision in the Cr.P.C. or concerned Act providing efficacious redress.

VII. Where a criminal proceeding is manifestly attended with *mala fide* or where a proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and to spite him due to a private and personal grudge.”

5. On aforesaid ground, learned counsel for the petitioners has prayed for quashing the order of cognizance.

6. However, learned A.P.P. and learned counsel for OP-2 vehemently opposed the prayer of petitioners and submitted that there are sufficient materials to take cognizance against petitioners. There is specific and direct allegation that after death of mother of complainant, they kept the cash and jewellery of the mother of complainant and refused to hand over to the complainant.

7. Considering the aforesaid facts and circumstances as well as law laid down by the Hon'ble Supreme Court, it is a fit case to interfere with the order of learned Court below. The present case is fully covered by Category (7) of **Bhajan Lal's case (*supra*)**. The present case is in retaliation of the Sandesh P.S. Case No. 76/2019, which has been lodged by petitioner no.



1 against the informant and his family members.

8. Considering the background of the case, I would be inclined to agree with submission of the counsel for the petitioners that the present complaint has been filed more in the nature of *vendetta* to humiliate, harass and teach a lesson.

9. Hence, this application is allowed. The order of cognizance dated 03.09.2020 passed by learned Judicial Magistrate 1st Class, Bhojpur, Ara in G.R. No. 4222 of 2019, arising out of Sandesh P.S. Case No. 216 of 2019, so far as these petitioners are concerned, is hereby quashed.

(Prabhat Kumar Singh, J)

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