

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.32846 of 2016

Arising Out of PS. Case No.-1306 Year-2013 Thana- PATNA COMPLAINT CASE District-
Patna

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Dinanath Ram, Son of Late Ayodhya Ram, Resident of Village- Bhakura, P.S.-
Simari, Distt.- Buxar

... .. Petitioner

Versus

1. The State of Bihar
2. Manohar Prasad, son of Late Shivnandan Prasad Singh, R/o Budha Colony,
P.S.-Budha Colony, Distt.-Patna

... .. Opposite Parties

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Appearance :

For the Petitioner/s : Dr. Kamal Deo Sharma, Advocate

For the Opposite Party/s : Mr. B.N. Pandey, APP

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CORAM: HONOURABLE MR. JUSTICE CHANDRA SHEKHAR JHA
ORAL JUDGMENT

Date : 04-04-2024

Heard learned counsel for the petitioner and
learned APP for the State.

2. The present application has been filed for
quashing the order dated 10.08.2015 passed by learned
Judicial Magistrate-1st Class, Patna in Complaint Case
No.1306 (C) of 2013 whereby the learned Jurisdictional
Magistrate has taken cognizance for the offence punishable
under Section 379 of the Indian Penal Code (for short 'IPC')
against the petitioner and other accused persons and
summoned them to face trial.

3. The prosecution case, in short, as per the



complainant, namely, Manohar Prasad, who is a practicing advocate, is that the petitioner, namely, Dinanath Ram had visited the house of complainant on 13.04.2013 and said that they were acquainted with his elder brother. As it was night and on next day, the petitioner had to visit a doctor nearby so, the petitioner requested for a night stay at the complainant's house. The complainant allowed the petitioner to stay at his house. In the next morning, when the complainant started getting ready for court, he found that his HMT wrist watch and Rs.1,000/- were missing. The complainant went to enquire at the clinic of doctor but, the petitioner was not available there.

4. In the background of aforesaid factual allegation, the cognizance for the offence under Section 379 of the IPC was taken by the learned Jurisdictional Magistrate, against the petitioner through impugned order.

5. It is submitted by learned counsel for the petitioner that prior to filing of this complaint, the petitioner has lodged a case against son of opposite party no.2, namely, Surendra Kumar, who was working as a counter



clerk in Head Post Office, Buxar, Bihar, as he misappropriated Rs.30,000/- sent by his son from Oman, where on his complaint, FIR was lodged as Buxar Town P.S. Case No.392 of 2012. It is submitted that when the son of opposite party no.2 was in jail, as a matter of retaliatory measures and also to create an unwanted legal pressure, on false and imaginary grounds, the present complaint case was filed against the petitioner. It is submitted that there was no occasion as alleged to take shelter at the house of complainant. It is also pointed out by learned counsel that the stay of petitioner at the house of opposite party no.2, who was shown in connection with visit to a doctor on next morning, where name of doctor was shown as Dr. B.K. Agrawal, whereas in solemn affirmation (S.A.), it was named as Dr. Gopal Prasad, making entire allegation further doubtful on its face.

6. While concluding argument, learned counsel submitted that petitioner is a retired Army man and out of ulterior and oblique motive being retaliatory measures, the present false complaint case was lodged against him, which



is nothing but an abuse of the process of law and is fit to be quashed and set aside. In support of his submissions, learned counsel relied upon legal report of Hon'ble Supreme Court decided in the matter of **State of Haryana vs. Bhajan Lal** reported in **1992 Supp (1) SCC 335**.

7. Upon perusal of record, it appears that notice was duly served upon opposite party no.2, who is a practicing lawyer of Masaurhi Civil Court, Dist.-Patna but, he failed to join the present court proceeding.

8. It would be apposite to reproduce para-102 of the legal report of Hon'ble Supreme Court passed in the matter of **Bhajan Lal case (supra)**, which is as under:-

“102. 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 Act concerned (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 Act concerned, 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.”

9. In view of aforesaid factual and legal submissions, as it appears that present complaint case was



lodged as a retaliatory measures out of ulterior and oblique motive, as petitioner lodged an FIR against son of opposite party no.2, where present complaint case was filed while the son of opposite party no.2 was in judicial custody, accordingly, by taking a guiding note of guideline nos. (1) and (7) of **Bhajan Lal case (supra)**, the impugned order dated 10.08.2015 passed by learned Judicial Magistrate-1st Class, Patna in Complaint Case No.1306 (C) of 2013, is hereby quashed and set aside *qua* petitioner.

10. The application stands allowed.

11. Let a copy of the judgment be communicated to the learned Trial Court forthwith.

(Chandra Shekhar Jha, J.)

Sanjeet/-

AFR/NAFR	NAFR
CAV DATE	NA
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