

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.8860 of 2015

Arising Out of PS. Case No.-261 Year-2012 Thana- CIVIL LINE District- Gaya

Raj Kapoor Yadav S/o Nand Kishore Yadav Mohalla - Gawal Bigha, P.S.
Rampur, Dist. - Gaya.

... .. Petitioner/s

Versus

1. State of Bihar
2. Om Prakash Agrawal S/o Umesh Pd. Agrawal R/o Sunder Nagar, P.S.
Patratu, Dist. Ramgarh.

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Amarendra Kumar Mishra, Advocate
For the Opposite Party/s : Mr. Rajendra Nath Jha, APP

CORAM: HONOURABLE MR. JUSTICE CHANDRA SHEKHAR JHA
ORAL JUDGMENT

Date : 10-04-2024

1. The present application has been preferred for quashing the order dated 03.10.2012 passed by learned Judicial Magistrate, 1st Class, Gaya in connection with Civil Line P.S. Case No. 261/2012 (G.R. No. 2776/2012, Tr. No. 2853/2013), where cognizance has been taken by the learned Jurisdictional Magistrate for the offences under sections 420, 467, 468, 471 & 120-B of the Indian Penal Code against all accused persons including petitioner.

2. The brief facts of the prosecution case as



per complaint is as follows:-

(i) That one Smt. Naina Agrawal W/o Om Prakash Agrawal entered into an agreement with Sri Randhir Kumar Singh S/o Sachida Nand Singh R/o Domuhan, Bodh Gaya Dist.-Gaya, on 20.10.2011 purchased a plot no. 1300, on part payment of Rs. 1,01,000/- against final consideration value of Rs. 8,00,000/- as per agreement. But latter on that land was sold perhaps to someone else and then Sri Om Prakash Agrwal fixed another plot to purchase in his name on the same cost, which was purchased on 06.12.2011.

(ii) That as per complaint, which latter on converted into F.I.R, during mutation, fact came into knowledge that the seller was not the real owner, and as such refund of money was demanded by the purchaser, which was not returned by the seller, resulting the case.

3. Learned counsel appearing for the petitioner submitted that petitioner is neither seller nor



purchaser of the disputed piece of land. It is submitted that even petitioner is not the attesting witness of the agreement or sale deed. It is further pointed out that petitioner is not even broker or dealing with the properties. It is also pointed out that there is no allegation available against petitioner out of narration of the complaint petition, as such, *prime facie*, no case is made out and on this score alone the present proceeding is fit to be quashed/set aside. It is further submitted that the fact of the complaint case or even during the investigation, no conspiracy, *prima facie*, established to suggest involvement of petitioner. It is submitted that out of civil dispute, present criminal case was lodged with harassing attitude out of ulterior and oblique motive.

4. In support of his submissions, learned counsel relied upon the legal report of Hon'ble Apex Court in the case of ***State of Haryana and Others vs. Bhajan Lal and Others*** reported in ***1992 Supp (1) Supreme Court Cases 335***.



5. Despite service of notice to opposite party no.2, no one turned up.

6. Learned APP appearing for the State, while opposing the application submitted that as per impugned order of cognizance, learned trial court found case, *prima facie* true against petitioner as per material available in case diary.

7. It would be appropriate to reproduce the paragraph no. 102 of the **Bhajan Lal Case** (supra), which reads 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 informant 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 nay 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 persons 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 concerned Act (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 concerned Act, 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.”

8. In view of aforesaid factual and legal submissions, as narration of complaint petition does not appear constituting, *prima facie*, any offence against petitioner with alleged transactions. Hence, by taking guiding note of guideline nos. 1, 5 & 7 of **Bhajan Lal**



Case (supra), the impugned order dated 03.10.2012 passed by learned Judicial Magistrate, 1st Class, Gaya, in connection with Civil Line P.S. Case No. 261 of 2012 (G.R. No. 2776/2012, Tr. No. 2853/2013) qua petitioner alongwith all its consequential proceedings is hereby quashed and set aside.

9. Accordingly, this application stands allowed.

10. TCR (Trial Court Records), if any, be returned to learned trial court alongwith the copy of this judgment.

(Chandra Shekhar Jha, J)

Archana/-

AFR/NAFR	NAFR
CAV DATE	NA
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