

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.9599 of 2016

Arising Out of PS. Case No.-1588 Year-2004 Thana- SIWAN COMPLAINT CASE District-
Siwan

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Ajaz Hussain S/o Id Mohammad, Resident of Village - Andar, Police Station -
Andar, District - Siwan.

... .. Petitioner/s

Versus

1. The State of Bihar.
2. Mahamddin Mia, S/o Late Karun Mia, Resident of Village P.O. P.S. - Andar,
District - Siwan.

... .. Opposite Party/s

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Appearance :

For the Petitioner/s : Mr.Birendra Nath Mishra, Advocate

For the Opposite Party/s : Mr.Md. Arif, APP

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CORAM: HONOURABLE MR. JUSTICE CHANDRA SHEKHAR JHA
ORAL JUDGMENT

Date : 06-03-2024

1. Heard learned counsel appearing on behalf of
the parties.

2. The present application has been filed for
quashing the order dated 25.08.2015 passed by learned
Judicial Magistrate, Siwan, in Complaint Case No. 1588
of 2004 where charges were framed by the learned
Jurisdictional Magistrate for the offences under sections
147, 323, 341, 427 and 504 of the Indian Penal Code
against all 17 accused persons.

3. As per the case of prosecution,



complainant/opposite party no. 2 alleged that on 26.08.2004 at about 7:00 AM all 17 accused persons, committed theft of she-goat and when complainant expressed anguish on theft, accused Sahjada Hussain provoked the other accused who attacked on complainant and taken away 12 bags of wheat, cloths, and also damaged pots and other house hold furniture etc. where the cost of stolen property was of Rs. 5000/- and cost of damaged articles was Rs. 3000/-.

4. In the background of aforesaid factual allegation, the learned Judicial Magistrate took cognizance against petitioner and other co-accused persons for the offence as alleged under Sections 147, 323, 341, 427 and 504 of the Indian Penal Code.

5. It is submitted by learned counsel appearing for the petitioner that complainant/opposite party no. 2 is in inimical term with petitioner and so, opposite party no. 2/complainant filed seven criminal cases against petitioner. It is submitted that taking note of the conduct



of opposite party no. 2 and all the factual position stated thereof, the complaint case no. 448/2005 was quashed by this Court through Cr. Misc. No. 40191 of 2009 vide order dated 13.09.2013. It is submitted that out of previous enmities and suspicion that petitioner informed police regarding illegal running of video-hall of opposite party no. 2 and also his involvement in theft of official documents from the office of Circle Officer, Andar, District-Siwan, the present false case was lodged against petitioner as to pressurize and harass him with ulterior motive. It is pointed out by learned counsel that on bare perusal of the complaint petition, no *prima facie* case appears to be made for the offences as it was took cognizance by the learned trial court through impugned order and, as such, this case is fit to be quashed.

6. Despite of service of notice, opposite party no. 2 failed to join present proceedings.

7. Heard learned APP for the State.

8. It would be apposite to re-produce para 102



of the ***State of Haryana and Ors. Vs. Bhajan Lal and Ors.***, reported in ***1992 Supp (1) Supreme Court Cases 335***, 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.”

9. It appears that the parties are in inimical



terms, where complainant lodged earlier seven criminal cases against petitioner out of trivial issues as of present. It further appears that allegation is appearing very much general and omnibus against petitioner, which filed on 25.10.2024 after about two months for the occurrence dated 26.08.2004 in a very planned and formulated manner. It further appears that the complaint petition of complainant/opposite party no. 2 is not supported by affidavit, which appears in violation of guideline as made mandatory in terms of legal report in the matter of ***Priyanka Srivastava and Another Vs. State of Uttar Pradesh***, reported in ***2015 (6) SCC 287***.

10. From the perusal of complaint petition, no overt act appears attributed to petitioner and it appears drafted in very mechanical manner, and, as such by taking note of guideline nos. 1, 5 and 7 of Bhajan Lal's Case (*supra*), the impugned order dated 25.08.2015 passed by learned Judicial Magistrate, Siwan, in



Complaint Case No. 1588 of 2004 alongwith all its consequential proceedings is hereby quashed and set aside, as any continuity would only amount to abuse the process of the court.

11. Accordingly, this application stands allowed.

12. Let copy of this order be sent to the trial court, without delay.

(Chandra Shekhar Jha, J)

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AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	11.03.2024
Transmission Date	11.03.2024

