

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.11011 of 2016

Arising Out of PS. Case No.-119 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. 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. Sahin Begum App

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CORAM: HONOURABLE MR. JUSTICE CHANDRA SHEKHAR JHA
ORAL JUDGMENT

Date : 29-03-2024

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

2. The present application has been filed for
quashing the order dated 05.11.2004 passed by learned
Judicial Magistrate, Siwan, in Complaint Case No. 119 of
2004, where cognizance has been taken by the learned
Jurisdictional Magistrate for the offences under sections
323/380/427/337/452 of the Indian Penal Code against
all accused persons including petitioner.

3. As per the case of prosecution,



complainant/opposite party no. 2 alleged that, on 20.01.2004 at about 04:00 PM, all 16 accused persons came in front of the house of opposite party no. 2 and said that nephew of complainant/opposite party no. 2 had abused them, on denial all the accused persons started abusing, on objection accused no. 6 attempted to assault the complainant who entered in the house and assaulted by fist and slap rest of the accused damaged the Khapra of roof by bricks causing loss of Rs. 4,000/- and also took away one bag of Wheat costing Rs. 700/-.

4. In the background of aforesaid factual allegation, the learned Judicial Magistrate took cognizance against petitioner and other co-accused persons for the offences as alleged under Sections 323/380/427/337/452 of the Indian Penal Code vide order dated 05.11.2004, which is the impugned order for present proceedings.

5. Learned counsel appearing for the petitioner submitted 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 positions stated thereof, in connection with previous enmities, the complaint case no. 448/2005 was quashed by this Court through Cr. Misc. No. 40191 of 2009 vide order dated 13.09.2013. Aforesaid order of the Hon'ble High Court was challenged by O.P. No. 2 before Hon'ble Apex Court through SLP (Cr.) No. 905 of 2004 but same was dismissed. While travelling over the argument, it is submitted that out of previous enmities and suspicion as 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 and oblique 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, cognizance was taken by the learned trial court through impugned order and, as such, this case is fit to be quashed.

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

7. Heard learned APP appearing 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. In view of aforesaid factual and legal submissions, 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, where more or less the nature of allegation is similar. It also appears that nature of allegation is appearing very much general and omnibus and just to harass with oblique and ulterior motives, the present false case was lodged in a very planned and formulated manner, where no overt act appears to be attributed to petitioner. Hence, by taking guiding note of guideline nos. 1, 5 & 7 of **Bhajan Lal Case (supra)**, the



impugned order dated 05.11.2004 passed by learned Judicial Magistrate, Siwan, in Complaint Case No. 119 of 2004 *qua* petitioner alongwith all its consequential proceedings is hereby quashed and set aside.

10. Accordingly, this application stands allowed.

11. 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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