

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.37693 of 2017

Arising Out of PS. Case No.-1493 Year-2015 Thana- MUZFFARPUR COMPLAINT CASE
District- Muzaffarpur

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Binod Kumar Paswan @ Binod Paswan Son of Late Munni Lal Paswan,
Working as Head Clerk, P.W.D. Road Department Maripur, Muzaffarpur R/o
Mohalla Village-Dhankar Tola, Satpura, P.S.- Kazi Mohammadpur, District-
Muzaffarpur.

... .. Petitioner/s

Versus

1. State of Bihar.
2. Pawan Kumar, Son of Late Ram Milan Parasad (Advocate Civil Court,
Muzaffarpur) R/o Muhammadpur Kazi @ Sadpura, Durga Asthan, Ward No-
33, P.S.- Kazi Mohammadpur, District- Muzaffarpur.

... .. Opposite Party/s

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Appearance :

For the Petitioner/s	:	Mr. Manoj Kumar Manoj, Advocate Mr. Surya Narayan Yadav, Advocate
For the Opposite Party/s	:	Sri Akshay Lal Pandit, APP

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CORAM: HONOURABLE MR. JUSTICE CHANDRA SHEKHAR JHA
ORAL ORDER

5 12-02-2024 1. Heard counsel appearing on behalf of the petitioner
and learned APP appearing on behalf of the State.

2. The present petition has been filed for quashing of
cognizance order dated 10.02.2017 passed in Complaint Case
No. 1493 of 2015 for the offences under Sections 341, 342/34 of
the Indian Penal Code (in short 'I.P.C.') to the extent of
petitioner and also the order dated 24.04.2015 by which, without
having any basis, the protest petition has been converted into
above numbered complaint case, which is pending in the court
of A.C.J.M.-cum Sub-Judge 1st, Muzaffarpur.



3. As a factual matrix, initially, complainant/opposite party no. 2 lodged FIR adding petitioner as an accused, which has been registered as Kazi Mohammadpur P.S. Case No. 135 of 2014, wherein it has been alleged that on 24.04.2014 at about 6.30 AM when petitioner was going for doing his court work and also depositing electric bills was stopped and surrounded by unknown persons and on pistol ATM card, Rs. 20,390/- from his pocket were taken by said unknown persons, where during the course of occurrence, it was said by unknown persons that don't make complaint to President of India regarding C.O., S.D.O. and others government officials because they are managed by Binod Paswan (petitioner) to whom he sold the piece of land against cash of Rs. 3 lacs. He was threatened by said unknown persons that he would face dire consequences if would not compromise the disputes with Binod Paswan (petitioner).

4. After investigation, police submitted final form against petitioner/accused, where a protest petition was filed by opposite party no. 2, which was treated as complaint. On the basis of the statement of enquiry witnesses, cognizance against petitioner for the offence under Sections 341, 342/34 of the Indian Penal Code was taken, which is the subject of this petition.



5. Notice was issued to opposite party no. 2, namely, Pawan Kumar, which duly served upon but he failed to join present proceeding.

6. It is submitted by learned counsel that from the statement of complainant on his S.A., the maximum what appears is suspicion as complainant/opposite party no. 2 had land dispute with petitioner. It is submitted that almost same fact was stated by all enquiry witnesses and save and except remote suspicion, nothing appears against petitioner and therefore, the order of cognizance is bad in eyes of law.

7. It would be apposite to re-produce provision of law as available under Sections 340 and 342 of the Indian Penal Code, which is as under:-

“340. Wrongful confinement.- *Whoever wrongfully restrains any person in such a manner as to prevent that person from proceedings beyond certain circumscribing limits, is said "wrongfully to confine" that person.*

“342 Punishment for wrongful confinement.- *Whoever wrongfully confines any person shall be punished with imprisonment of either description for a term which may extend to one year; or with fine which may extend to one thousand rupees, or with both.”*

8. It is clear from the statement of complainant/opposite party no. 2 that he was stopped by unknown persons. The petitioner was not present thereof. This is



not a case of complainant that occurrence took place on the instance of petitioner, rather it appears that as there is land dispute between the parties, he raised suspicion against petitioner for committing the offence.

9. 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.”

10. On perusal of record and by taking factual note of complaint on face, in the background of above discussed legal ratio, it appears that the present prosecution is nothing but a malicious prosecution as same was brought only on the basis of suspicion in background of land dispute, with an ulterior motive.

11. Accordingly, present application for quashing is hereby allowed by quashing the impugned order dated 10.02.2017 and all consequential proceedings.

12. Let a copy of this order be sent down immediately to trial court.

(Chandra Shekhar Jha, J)

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