

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.15868 of 2016**

Arising Out of PS. Case No.-109 Year-2014 Thana- KATIHAR COMPLAINT CASE
District- Katihar

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Ranju Devi Wife of Late Bindeshwari Sah Resident of Village -
Govindpur Road, P.S.- Falka, District - Katihar

... .. Petitioner

Versus

1. The State of Bihar
2. Anisur Rahman Sonof Late Safir Rahani
3. Md. Raisuddin @ Rayees Son of Late Safir Rahmani
4. Ali Hassan @ Bhallo Son of Late Safir Rahman
5. Faiju Son of RAsuddin @ Rayees
6. Nurain Son of Ansu Rahmani
7. Md. Chhedi Son of S.K. Juman All Resident of Village - Maheshpur,
P.S.- Falka, District - Katihar

... .. Opposite Parties

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Appearance :

For the Petitioner	:	Mr.Bimal Kumar, Advocate Mr.Birendra Kumar, Advocate
For the Opposite Parties	:	Mr.Navin Kumar Pandey, APP Mr.Raghuvendra Kumar Singh, Advocate

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**CORAM: HONOURABLE MR. JUSTICE CHANDRA SHEKHAR JHA
ORAL JUDGMENT**

Date : 18-03-2024

Heard learned counsel for the petitioner and
learned A.P.P. for the State duly assisted by learned counsel
for the informant.

2. This application has been filed for quashing the
order dated 10.10.2015 passed in C.A. Case No. 109 of
2014 by which the learned C.J.M., Katihar dismissed the
Complaint Case filed by the petitioner under Section 203 of



the Code of Criminal Procedure (in short the "Cr.P.C.") as well as for setting-aside the order dated 23.02.2016 passed by learned Sessions Judge, Katihar in Cr. Rev. No. 03 of 2016 by which learned Sessions Judge also dismissed aforesaid revision application of the petitioner.

3. The brief facts as per complaint is that the complainant being a poor lady, having five small childrens, where her husband had a land dispute with opposite parties. She stated that on 01.12.2013 in the night at about 8:00 p.m., while she was going to her sasural and reached near the house of one Anisul Rahman, saw Anisul Rahman and other accused persons assembled there, when she came near to them, she saw her husband was lying in unconscious condition on the ground, she started crying and, thereafter, her husband was taken to hospital where her husband got consciousness and disclosed that all the accused persons assaulted him due to land dispute, after stating aforesaid, he again became unconscious and died. Thereafter, she disclosed the name of the accused persons before police, who had killed her husband. She alleged that police had



taken her and her brother's signature on the blank paper on the pretext of post-mortem, but subsequently, she learnt that police has instituted a case of motor accident in collusion with the accused persons and registered a case as Falka P.S. Case No. 252 of 2013 under Section 279, 304A of the Indian Penal Code (in short the 'I.P.C.'). When she came to know about the said mischief, she sent her application before higher police authorities, but no step was taken, thereafter she filed the present complaint case with a prayer to take cognizance against the opposite parties under Section 302, 201/34 of the I.P.C.

4. On the basis of said complaint being C.A. Case No. 109 of 2014, the learned Magistrate call for an enquiry report from the Sub-Divisional Police Officer, Katihar under Section 202 of Cr.P.C.

5. The main submission of learned counsel appearing on behalf of the petitioner, as the present complaint case was filed, which *prima-facie* suggest offence as a session triable case and, therefore, Magistrate is bound to examine the complainant and her witnesses as per



provision laid down under Section 202(2) of the Cr.P.C. It is submitted that as the learned Magistrate failed to examine the complainant and her witnesses on oath, therefore, the impugned order of dismissal of complaint under Section 203 of Cr.P.C. is bad in the eye of law. It is further submitted that said position of law though appreciated by learned Sessions Judge in Cr. Rev. No. 03 of 2016, but taking note of factual scenario of the present case, the order of dismissal of complaint under section 303 of Cr.P.C. was not set-aside, which is bad in eyes of law.

6. It is further submitted by learned counsel that the motive behind the occurrence is already explained in complaint petition i.e. the property dispute between the parties. It is also submitted that complainant claimed herself to be an eye witness of the occurrence and, as such, a *prima-facie* session triable case is made out, where rest are the matter of trial.

7. Learned A.P.P. for the State duly assisted by learned counsel for the informant submitted that the present complaint case was filed after 40 days of the alleged



occurrence, where complainant claimed herself as an eye witness of the occurrence, while she was going to her parental village from her matrimonial house. It is submitted that it is very strange that being an eye witness of the occurrence she failed to file even protest petition, rather chose to file a separate complaint. It is also pointed out that during investigation, it surfaced that the husband of complainant died out of road accident while he was going to attend the '*Satsang*' at Rangakol village, where vehicle in issue could not traced. It is submitted that post-mortem report also submitted that death was caused due to hit of hard and blunt object and shock.

8. It would be apposite to reproduce provision of Section 202 of the Cr.P.C. which reads as under:

"202. Postponement of issue of process - (1)

Any Magistrate, on receipt of a complaint of an offence of which he is authorised to take cognizance or which has been made over to him under section 192 may, if he thinks fit, [and shall, in a case where the accused is residing at a place beyond the area in which he exercises his jurisdiction] [Inserted by Act 25 of 2005, Section 19 (w.e.f. 23-6-2006).] postpone the issue of process against the accused, and either inquire into the case himself or direct an investigation to be made by a police officer or by such other person as he thinks fit, for the purpose of deciding whether or not there is sufficient ground for



proceeding:

Provided that no such direction for investigation shall be made, -

(a) where it appears to the Magistrate that the offence complained of is triable exclusively by the Court of Session; or

(b) where the complaint has not been made by a Court, unless the complainant and the witnesses present (if any) have been examined on oath under section 200.

(2) In an inquiry under sub-section (1), the Magistrate may, if he thinks fit, take evidence of witnesses on oath :Provided that if it appears to the Magistrate that the offence complained of is triable exclusively by the Court of Session, he shall call upon the complainant to produce all his witnesses and examine them on oath.

(3) If an investigation under sub-section (1) is made by a person not being a police officer, he shall have for that investigation all the powers conferred by this Court on an officer-in-charge of a police station except the power to arrest without warrant."

9. It would be further important to introduce

Section 173(8) of the Cr.P.C. which reads as such:

"173(8) Nothing in this section shall be deemed to preclude further investigation in respect of an offence after a report under sub-section (2) has been forwarded to the Magistrate and, where upon such investigation, the officer in charge of the police station obtains further evidence, oral or documentary, he shall forward to the Magistrate a further report or reports regarding such evidence in the form prescribed; and the provisions of sub-sections (2) to (6) shall, as far as may be, apply in relation to such report or reports as they apply in relation to a report forwarded under sub-section (2)."

10. It would further be apposite to reproduce



paragraph '102' of the legal report of Hon'ble Supreme Court in the case of **State of Haryana and Ors. Vs. Bhajan Lal and Ors [(1992) Supp (1) SCC 335]** which is being reproduced hereunder for a ready reference:

"**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.”

11. From the aforesaid factual and legal discussions, it appears that there was land dispute between the parties, as claimed by the complainant herself, where admittedly the present complaint case was filed after 40 days of the occurrence without filing any protest petition and as such an ulterior and oblique motive, *prima-facie* cannot be denied. It is well established principle of law that taking cognizance is a subjective satisfaction of the learned Jurisdictional Magistrate. In the present case, through a



reasoned and detailed order, the complaint petition of the petitioner was dismissed.

12. In view of above, it appears *prima-facie* that present case is covered under the guidelines No. 1, 5 and 7 of **Bhajan Lal** case (supra) and, as such, the order of dismissal of complaint under section 203 of Cr.P.C. by the learned Jurisdictional Magistrate, which further affirmed by learned Sessions Judge through impugned orders, not required to be interfered with.

13. Accordingly, the present petition stands dismissed.

(Chandra Shekhar Jha, J.)

Rajeev/-

AFR/NAFR	NAFR
CAV DATE	NA
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