

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.27713 of 2015

Arising Out of PS. Case No.-957 Year-2014 Thana- PATNA COMPLAINT CASE District-
Patna

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1. Arbind Kumar, son of late Dr. Ram Kailash Prasad, resident of Mohalla – Khajpura, B.M.P. Road, Near – Ashiana More, P.S. - Airport, District – Patna.
 2. Vijay Virmani Kumar, son of Late Ram Chandra Das, resident of village – Chaurai, P.S. - Aungari, District – Nalanda.

Present Address: Signal Maintainer, Kulharia Station, P.S. - Koilwar, District – Bhojpur. Petitioners

Versus

1. The State of Bihar
2. Sandeep Kumar, son of Sri Ram Sevak Verma, resident of village – Dilawarpur, P.S. - Bihta, District – Patna.

Present address : Signal Helper, Kulharia Station, P.S. - Koilwar, District – Bhojpur. Opposite Party

Appearance :

For the Petitioner/s : Mr.Anil Kumar, Advocate
For the Opposite Party/s : Mr.Jharkhandi Upadhyaya, APP

CORAM: HONOURABLE MR. JUSTICE CHANDRA SHEKHAR JHA
ORAL JUDGMENT

Date : 26-02-2024

Heard learned counsel for the petitioners and learned
A.P.P. for the State.

2. Both the above-named applicants have filed the present application under Section 482 of the Code of Criminal Procedure (in short the “Cr.P.C.”) seeking quashing of order dated 08.12.2014 passed in Complaint Case No. 957(C)/2014 by the learned Sub-Divisional Judicial Magistrate, Danapur whereby cognizance has been taken against the petitioners for the offence under Section 420 of the Indian Penal Code (in short



the “I.P.C.”).

3. As per the crux of the complaint petition, petitioner no1 namely, Arbind Kumar was posted as Section Engineer, Signal, Danapur, Patna, whereas petitioner no. 2 namely, Vijay Virmani Kumar was posted as Signal Maintainer, Kulharia railway station, P.S. - Koilwar, District – Bhojpur. It is alleged thereof that both the petitioners collectively demanded monthly extortion money of Rs. 3,000/- from the complainant/opposite party no. 2 for marking his attendance. When the same was refused, petitioners assaulted the complainant/opposite party no. 2, for which a complaint case was lodged as Khagaul P.S. Case No. 92/2013 which, after compromise, was settled between the parties after intervening of higher officials. Even thereafter, petitioners were not restrained themselves to stop complainant/opposite party no.2 for marking his attendance at Kulharia railway station and when he alongwith his father on 07.08.2014 at about 10:00 A.M. reached at the office to settle the issue with higher officials, petitioners were assaulted him and also his father and raised their demand for Rs. 6,000/- as monthly extortion money, where during occurrence, petitioner no. 1 snatched golden chain worth Rs. 30,000/- from the complainant. When the matter was reported by complainant/



opposite party no. 2 to police, it was not entertained as being departmental issue and thereafter the present complaint case was lodged for the offence alleged under Sections 323, 341, 504, 384, 379/34 of the I.P.C., where after enquiry, cognizance was taken for the offence under Section 420 of the I.P.C. only.

4. It is submitted by learned counsel appearing on behalf of the petitioners that complainant/ opposite party no. 2 was of habit to absent in unauthorized manner from duty and when it was checked by petitioners being officials of higher rank, the present false case was lodged with ulterior motive just to harass them. It is pointed out that complainant/ opposite party no. 2 was suspended for the period 21.03.2014 to 04.04.2014, thereafter he remained punctual for two months and, again from the month of June 2014, he remained absent without informing the petitioners/higher officials and just to evade further proceeding, the present false case was lodged.

5. It is further submitted by learned counsel that the present complaint case was lodged with a delay of eight days in a very planned and formulated manner. It is further submitted that from perusal of complaint on its face itself, no prima-facie case is made out under Section 420 of the I.P.C.

6. Learned A.P.P. for the State vehemently argued that



the offence under Section 420 of the I.P.C. is made out against the petitioners/applicants and, at this stage, extraordinary power as available under Section 482 of the Cr.P.C. should restrain to interfere into the matter.

7. Taking note of the aforesaid submission of learned A.P.P. for the State, this Court is of the considered view that the law laid down by Hon'ble Supreme Court in series of cases including **State of Haryana and Ors. Vs. Bhajan Lal and Ors [(1992) Supp (1) SCC 335]** and in the case of **Gian Singh Vs. State of Punjan and Haryana [(2012) 10 SCC 303]**, from bare reading of the complaint and going through various materials available on the record, if no offence is made out as alleged, the jurisdiction available to this Court under Section 482 of the Cr.P.C. can be exercised. From the impugned order, it is apparent that cognizance for the offence under Section 420 of the I.P.C. was taken against the petitioners. It would be appropriate to reproduce Section 420 of the I.P.C., which runs as under:

“420. Cheating and dishonestly inducing delivery of property.— Whoever cheats and thereby dishonestly induces the person deceived to deliver any property to any person, or to make, alter or destroy the whole or any part of a valuable security, or anything which is signed or sealed, and which is



capable of being converted into a valuable security, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.”

8. From the aforesaid provision as laid down under Section 420 of the I.P.C., it is clear that offence under Section 420 of I.P.C. is made out only when a person dishonestly with an intention of cheating, induces the person, deceived to delivery any property to any person and a valuable security is converted or dealt with in a manner. From perusal of the complaint petition on its face, it appears that petitioner no. 1 asked for extortion of Rs. 6000/- whereas petitioner no. 2 snatched a golden chain from complainant/opposite party no.2. On the date and time of occurrence petitioners were absent from their duty. There is no ingredient available in the facts as narrated hereinabove to show that there was cheating, or there was dishonest intention to deceive the complainant/opposite party no. 2 and deliver property to the petitioners/applicants.

9. At this stage, Mr. Jharkhandi Upadhyay, learned A.P.P. for the State, pointed out the observations of this Court while dealing with Cr. Misc. No. 37921 of 2015 dated 18.04.2018, Where one of the co-accused Dharmendra Kumar approached this Court for quashing of the cognizance order.. The relevant part of the aforesaid judgment runs as under:



“At best, an offence under Section 420 I.P.C., based on the facts, as are narrated hereinabove, would be made, only against Sri Arvind Kumar and not against the present applicant.”

10. It would be apposite to reproduce paragraph ‘102’ of the legal report of Hon’ble Supreme Court in the case of **Bhajan Lal** (supra), 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. In view of aforesaid factual and legal discussion and by taking guiding note of the guidelines no. 5 and 7, it appears that *prima-facie* no offence is made out under Section 420 of the I.P.C. *qua* petitioner no. 2 namely, Vijay Virmani Kumar. Accordingly, this application is allowed *qua* petitioner no. 2 and order dated 08.12.2014 passed in Complaint Case No. 957(C) of 2014 passed by learned S.D.J.M., Danapur along with all it's consequential proceeding is hereby quashed and set-aside *qua* petitioner no. 2.



12. In view of aforesaid factual and legal discussions and also by taking note of the observation of this Hon’ble High Court while disposing of Cr. Misc. No. 37921/2015 dated 18.04.2018, the prayer for quashing *qua* petitioner no. 1 namely, Arbind Kumar, is hereby dismissed.

13. Let a copy of this order be communicated to learned trial court immediately.

(Chandra Shekhar Jha, J.)

Rajeev/-

AFR/NAFR	NAFR
CAV DATE	
Uploading Date	28.02.2024
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