

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.37633 of 2015**

Arising Out of PS. Case No.-91 Year-2012 Thana- MADHEPURA COMPALINT CASE
District- Madhepura

Vijay Kumar Son of Sri Shubhak Lal Yadav Resident of village - Aadawari,
P.S. Chautham, District - Khagariya, Bihar

... .. Petitioner

Versus

1. The State of Bihar
2. Bibi Kulsum Wife of Md. Mahiuddin Resident of village - Lalkuriya, P.S. Srinagar, District - Madhepura, Bihar

... .. Opposite Parties

Appearance :

For the Petitioner/s : Mr.Dinesh Prasad Verma, Advocate
For the Opposite Party/s : Mr.Akbar Ali, APP

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

Date : 04-03-2024

Heard learned counsel appearing on behalf of the petitioner and learned A.P.P. for the State, whereas O.P. No.2 remains un-represented despite given sufficient opportunity.

2. The present application is being filed to quash the order of cognizance dated 27.03.2015 passed by learned Judicial Magistrate - 1st Class, Madhepura in Complaint Case No. 91 of 2012 registered under Sections 323, 341, 504 of the Indian Penal Code (in short the 'I.P.C.')

3. The brief facts of the case, as per complaint that the petitioner namely, Vijay Kumar, the then Deputy Superintendent of Police, Madhepura Sadar, asked complainant, who is also the informant of Madhepura P.S. Case No. 517/2011 for illegal



gratification and demand of money, for favourable report. It is further alleged that while complainant was waiting for vehicle to go Saharsa, in the meantime, one police personnel came there and asked her to come with him near to one Bolero vehicle, in which said Dy.S.P./petitioner and three unknown persons were present. She further alleged that said Vijay Kumar (petitioner) assaulted her and threatened her not to visit the court or police station.

4. On the basis of the above-mentioned written complaint, a case was registered in the court of learned Chief Judicial Magistrate, Madhepura vide Complaint Case No. 91 of 2012 for the offence under Section 341, 323, 354, 384 and 504 of the Indian Penal Code, where cognizance was taken for offence under Section 323, 341 and 504 of the Indian Penal Code.

5. It is submitted by learned counsel appearing on behalf of the petitioner that out of matrimonial discord, as the husband of complainant solemnized his second marriage, she lodged a case against her husband, which has been registered as Madhepura P.S. Case No. 517/2011 for the offence under Section 342, 323, 379, 384/34 of the I.P.C. The petitioner being Deputy Superintendent of Police of the said area, while



supervising the case directed the police officials to submit final form against the accused persons i.e. husband of the complainant by exonerating him from the allegation. It is submitted that being supervising authority, petitioner further recommended to initiate a proceeding against complainant for the offence under Section 182 and 211 of the I.P.C.

6. It is submitted that said supervision note is of date 27.12.2011 and when complainant came to know that petitioner being Dy.S.P. directed the Investigating Officer of her case to submit final form, the present case was lodged with false and concocted allegations. It is submitted that this case was brought with ulterior motive to pressurize the petitioner to re-visit his supervision note.

7. It would 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.”

8. Having heard learned counsel for the parties and taking note of the legal submission, it appears that petitioner was Deputy Superintendent of Police, where being supervising authority, he directed investigating officer to submit final form in Madhepura P.S. Case No. 517/2011, which has been lodged by complainant of this case against her husband out of matrimonial discord. During supervision, a recommendation was made to initiate a proceeding against complainant/O.P. No. 2 for the offence under Section 182 and 211 of the I.P.C., through supervising note dated 27.12.2011 and immediately thereafter the present complaint case was lodged on 30.01.2012. It appears *prima-facie* that the present case was lodged with an ulterior motive for wrecking vengeance on the accused/petitioner with a view to spite him due to private and personal grudge. The case of petitioner is *prima-facie* covered under guideline no. 7 as discussed above in the case of **Bhajan**



Lal (supra).

9. In view of above, the impugned order dated 27.03.2015 passed by learned Judicial Magistrate - 1st Class, Madhepura in Complaint Case No. 91 of 2012 is hereby quashed and set-aside with all it's consequential proceeding *qua* petitioner.

10. Let a copy of this order be sent to learned trial court immediately.

(Chandra Shekhar Jha, J.)

Rajeev/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	06.03.2024
Transmission Date	06.03.2024

