

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.34920 of 2016

Arising Out of PS. Case No.-84 Year-2015 Thana- MAJORGANJ District- Sitamarhi

Chandrika Prasad Singh @ Shri Chandrika Prasad Singh son of Late Tez
Narayan Singh resident of village -Dheng, PS - Majorganj, District- Sitamarhi

... .. Petitioner/s

Versus

1. State Of Bihar and Anr
2. Manoj Kumar son of Krishna Chandra Prasad Singh resident of village -
Gamhariya, PS- Majorganj, District- Sitamarhi

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr. Ashhar Mustafa, Advocate
	:	Mr. Kumar Kaushik, Advocate
	:	Mr. Ashish Kr. Ranjan, Advocate
	:	Mr. Vikash Kr. Jha, Advocate
For the Opposite Party/s :		Mr. Anil Kumar Singh No.1, APP
For Opposite Party No.2 :		Mr. V.R.P. Singh, Advocate
	:	Mr. G.C. Roy, Advocate

CORAM: HONOURABLE MR. JUSTICE CHANDRA SHEKHAR JHA
ORAL ORDER

7 23-02-2024 1. Heard learned counsel for the petitioners and
learned counsel for the respondents.

2. The present quashing petition has been preferred
against the order dated 03.03.2016 passed in Trial No. 639 of
2016 and G.R. No. 1238 of 2015 arising out of Majorganj P.S.
Case No. 84 of 2015, where learned Additional Chief Judicial
Magistrate, 1st Sitamarhi took cognizance for the offences



punishable under sections 406 and 420 of the Indian Penal Code against the petitioner.

3. The complainant/Opposite Party No. 2, join the present proceedings.

4. From the crux of complaint petition it appears that in 1981-1982, grandfather of complainant Late Shri Bindeshwari Prasad Singh registered two acres of land with certain conditions from Khata No. 333, 221, Khesra No. 897, 898, 896 of Thana No. 17, Mauje - Babhangama, Village - Gamharia in favor of the petitioner. It is alleged that it was agreed that after making arrangements of the consideration money, the grandfather of O.P. No. 2 would return the said sum with interest to the petitioner and therefore, petitioner would be obliged to register back the same piece of land in favour of the grandfather of O.P. No. 2. It is further said that when the grandfather of O.P. No. 2 requested the petitioner to take back his money and execute the return sale deed, petitioner kept on evading the offer under a criminal conspiracy. The grandfather of O.P. No. 2 expired in the year 1991. It is said that thereafter, the uncle of the petitioner Late Dinesh Prasad Singh visited the village home of the petitioner and requested him to return his land in presence of co-villagers. It is said that in a community



meeting, it was decided that on payment of Rs 70,000/-, petitioner would register the same piece of land in favour of the two sons of Late Bindeshwari Prasad Singh, namely (1) Late Dinesh Prasad Singh, and (2) Krishna Chandra Prasad Singh. Although petitioner is said to have accepted the above decision, he again continued evading the request of registration. That after the death of the uncle of O.P. No. 2, it is said that O.P. No. 2 along with his several other lawyer colleagues and others visited the Sonavati Colony residence of the petitioner in the year 2014 on the day of Dussehra and upon their request, petitioner agreed to return the land and immediately thereafter, petitioner was paid a sum of Rs. 1,00,000/- in the said meeting itself in presence of participants. It was agreed that petitioner would register the said piece of land in favour of O.P. No. 2 and Rajan Kumar Singh S/o Late Dinesh Chandra Prasad Singh. However when Rajan Kumar Singh approached the petitioner to pay him Rs. 1,00,000/- cash on 10.04.2015, petitioner again refused to register the land. It was then alleged that the petitioner misappropriated Rs. 1,00,000/- cash and also breached the trust posed on him by refusing to return the land.

5. It is submitted that aforesaid land was alleged to be registered in the background of compromise that same would



be returned to opposite party at relevant point of time after returning the consideration amount. After passing of considerable period of time i.e., about 30 years, out of oral agreement to return the said piece of land Rs. 1,00,000/- was paid by opposite party but remaining Rs. 1,00,000/- and execution of sale deed returning to the aforesaid piece of land in favour of O.P. No. 2 was not executed by petitioner. It is submitted that in the aforesaid background the present FIR was lodged, whereafter investigation final form exonerating petitioner was submitted by investigating officer, where by deferring with by referring material available under para no. 7, 8, 9, 10 and 19 of the case diary, learned Jurisdictional Magistrate took cognizance against petitioner under Section 406 and 420 of the IPC vide order dated 03.03.2016.

6. It is submitted that in referred para of cognizance order of 03.03.2016 of case diary, witnesses who made statement in para nos. 8, 9 and 10 are hearsay witnesses, whereas witnesses made their statement under para 7 and 9 are appearing beneficiary of land in issue. Learned counsel appearing on behalf of petitioner submitted that disputing registered document, which is more than 30 years old on the basis of a concocted story and to lodge a criminal case where



cognizance was taken under Section 406 & 420 of the IPC is completely an absurd finding and amounting to abuse the process of law.

7. It would be apposite to reproduce the paragraph no. 102 of the Apex Court decision in the case of ***State of Haryana and Others vs. Bhajan Lal and Others 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.”

8. Learned counsel appearing on behalf of O.P. No. 2, while opposing the application submitted that at the stage of quashing, statement of witnesses as recorded during the course of investigation under Section 161 of the Cr.P.C. cannot be re-appreciated as same is not permissible under the law. It is further submitted that taking cognizance is a subjective



satisfaction of learned Jurisdictional Magistrate, where petitioner may get sufficient opportunity to raise all such issues at appropriate stage during the proceeding itself, whereas by closing his argument learned counsel for O.P. No. 2 fairly conceded that land in issue was duly registered in favour of petitioner by grandfather of O.P. No. 2, where for any subsequent agreement as raised through FIR, no documentation was ever made.

9. In view of aforesaid factual and legal submissions as discussed above it appears that present case was brought by O.P. No. 2 only to create a legal pressure to return the said piece of land, which was duly transferred in favour of petitioner by his grandfather through registered sale deed before 30 years and as such it can be safely gathered that present prosecution was brought with an ulterior motive, face of FIR also suggests that no, *prima facie*, case for the offences punishable under 406 and 420 of the IPC made out. The fact of this case is squarely covered by guideline nos. 1 and 7 of **Bhajan Lal (supra)**, accordingly impugned order dated 03.03.2016 and all consequential proceeding arising thereof as passed in Trial No. 639 of 2016 and G.R. No. 1238 of 2015 arising out of Majorganj P.S. Case No. 84 of 2015, by learned



Additional Chief Judicial Magistrate, 1st Sitamarhi is hereby
quashed and set aside.

10. The application stands allowed.

11. Let a copy of this order be sent to learned Trial
Court, immediately.

(Chandra Shekhar Jha, J.)

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