

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.34406 of 2016

Arising Out of PS. Case No.-111 Year-2010 Thana- PATNA COMPLAINT CASE District-
Patna

-
1. Vimal Kishore Singh, son of Narendra Singh
 2. Khusboo Singh @ Rajni Kumari wife of Vimal Kishore Singh
 3. Prem Kumar Singh son of Narendra Singh all resident of Chiraiyatand, Chandmari Road, Near T.P.S. College, P.S. Kankarbagh, District Patna
 4. Rahul Kumar son of Purendranath Singh
 5. Raushan Kumar son of Purendranath Singh Both resident of Bhagwat Nagar, Bhootnath Road, P.S. Agamkuan, District Patna
 6. Krishna Singh son of Late Ramadhar Singh
 7. Vikash Singh son of Krishna Singh
 8. Saroj Singh wife of Krishna Singh All Resident of Mohalla- Mahavir Colony, P.S. Bahadurpur, District Patna

... .. Petitioner/s

Versus

1. State of Bihar.
2. Sunil Kumar Singh son of Late Misri Lal Singh resident of Mohalla Nuruddinganj, P.S. Malsalami, district Patna

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr. Ajay Kumar Thakur, Advocate Ms. Vaishnavi Singh, Advocate Mr. Nilesch Kumar, Advocate
For the Opposite Party/s :		Mr. Sri Ramchandra Singh, APP

CORAM: HONOURABLE MR. JUSTICE CHANDRA SHEKHAR JHA
ORAL ORDER

15 12-02-2024 1. Heard Mr. Ajay Kumar Thakur, appearing on behalf of the petitioners and learned APP appearing on behalf of the State.

2. The present petition has been filed for quashing the order dated 04.08.2010 passed by learned Judicial Magistrate, Patna City in Complaint Case No. 111 of 2010, where the



process under Section 204 of Code of Criminal Procedure (Cr.P.C.) has been directed to be issued after taking cognizance under Sections 323, 341, 448 and 380 of the Indian Penal Code against petitioners.

3. As per crux of complaint petition, the petitioners who are relatives of the deceased wife of one Mintu Kumar, maternal nephew of complainant after death of his wife namely, Kusum Kumari at Nalanda Medical College & Hospital (NMCH), Patna came to his sisters home (in-laws house of deceased) and took away jewellerys and cash.

4. Notice was issued to complainant/opposite party no. 2 by this Court, where even after publication in newspaper, he failed to appear before the Court. On publication in daily newspaper, this Court proceeded with the matter, satisfying notice was duly served upon complainant/opposite party no. 2.

5. Learned counsel Mr. Thakur appearing for the petitioners submitted that the sister of petitioner nos. 4 and 5 was married with one Mintu Kumar, who is the maternal nephew of the complainant, due to non-fulfillment of demand of dowry, the sister of petitioner nos. 4 and 5 was killed by said Mintu Kumar, where for said occurrence Alamganj P.S. Case No. 16 of 2010 was lodged on 03.02.2010, raising accusations



under Section 304B of the Indian Penal Code against the complainant of the present case and immediate in-laws family members.

6. It is further submitted by Mr. Thakur appearing on behalf of the petitioners that the aforesaid complaint case was filed as a matter of retaliatory measure on 18.02.2010 to counter the Alamganj P.S. Case No. 16 of 2010, which was lodged on 03.02.2010 by petitioners/accused. It is pointed out that the circumstances of filing present complaint petition clearly suggest that same has been filed with malafide intention indicating sufficiently as malicious prosecution. It is submitted that the complainant improved over certain material aspects while recording his statement on solemn affirmation (SA) *qua* complaint petition. In support of submission, learned counsel submitted that specified cash amount not appears in complaint petition, whereas while recording his S.A., he said that a cash of Rs. 55,000/- was taken away by complainant from the house of mother of Mintu Kumar. It is submitted that complainant is maternal uncle and distant relative of the main accused of Alamganj P.S. Case No. 16 of 2010, who is the husband of sister of petitioner nos. 4 and 5.

7. It would be apposite to re-produce para-28 of the



legal report in the matter of ***Pepsi Foods Ltd. & Anr. Vs. Special Judicial Magistrate and Ors.***, reported in ***(1998) 5 SCC 749***, which reads as under:-

“28. Summoning of an accused in a criminal case is a serious matter. Criminal law cannot be set into motion as a matter of course. It is not that the complainant has to bring only two witnesses to support his allegations in the complaint to have the criminal law set into motion. The order of the magistrate summoning the accused must reflect that he has applied his mind to the facts of the case and the law applicable thereto. He has to examine the nature of allegations made in the complaint and the evidence both oral and documentary in support thereof and would that be sufficient for the complainant to succeed in bringing charge home to the accused. It is not that the Magistrate is a silent spectator at the time of recording of preliminary evidence before summoning of the accused. Magistrate has to carefully scrutinise the evidence brought on record and may even himself put questions to the complainant and his witnesses to elicit answers to find out the truthfulness of the allegations or otherwise and then examine if any offence is *prima facie* committed by all or any of the accused.”

8. Learned counsel further submitted that the complaint is not supported by any affidavit, in view of legal reports of ***Priyanka Srivastava and Anr. Vs. State of Uttar Pradesh and Ors.***, reported in ***(2015) 6 SCC 287***.

9. It would be further 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 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 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 the perusal of record, it appears that the present complaint case was filed on 18.02.2010 after lodging the Alamganj P.S. Case No. 16 of 2010, which was lodged on 03.02.2010 i.e. after 15 days, where the maternal nephew (Bhanja) of complainant, arrayed as main accused being the husband of sister of petitioner nos. 4 and 5. It appears from the complaint petition, that same is not supported by any affidavit. Only two witnesses were examined, first is complainant himself and second is Dilip Kumar. Admittedly, complainant is maternal uncle and as such, distantly related with Mintu Kumar to lodge the present complaint for the occurrence, which alleged to be happened in house of his maternal nephew. It appears that neither the mother, nor father or any family members of Mintu Kumar, who may be the eye witness, came forward to support



the complaint petition which indicates that just to counter the Alamganj P.S. Case No. 16 of 2010, the present complaint petition was filed, where complainant is also an accused. The said complaint was filed on 18.02.2010 for the occurrence of 02.02.2010 i.e. after 16 days, suggesting *prima facie*, planned, formulated and malicious prosecution which must be taken note in view of guidelines (7) of para 102 of ***Bhajan Lal*** (*supra*).

11. Accordingly, this application stands allowed.

12. Hence, impugned order dated 04.08.2010 passed by learned Judicial Magistrate, Patna City in Complaint Case No. 111 of 2010 is hereby quashed.

13. LCR, if any, be sent back to learned trial court along with the copy of this order.

(Chandra Shekhar Jha, J)

veena/-

U		T	
---	--	---	--

