

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.19622 of 2016

Arising Out of PS. Case No.-1082 Year-2015 Thana- PATNA COMPLAINT CASE District-
Patna

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1. Jai Nandan Prasad @ Jai Nandan Rai Son of Mundrika Yadav
 2. Deepak Rai @ Deepak Kumar
 3. Mukesh Rai @ Mukesh Kumar Both minor sons of Jai Nandan Prasad @ Jai Nandan Rai All resident of Mohalla - Sipada, Harichand Nagar, Police Station Beur, District - Patna

... .. Petitioner/s

Versus

1. State Of Bihar
2. Mamta Devi Wife of Sri Ranjit Prasad resident of Durga Charan Lane, Police Station Alamganj, District Patna at Present Mohalla - Sipada, Harichand Nagar, Police Station Beur, District - Patna

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr.Anil Kumar Singh
For the Opposite Party/s : Mr.Madan Kumar App

CORAM: HONOURABLE MR. JUSTICE CHANDRA SHEKHAR JHA
ORAL JUDGMENT

Date : 15-02-2024

The present petition has been preferred to quash the cognizance order dated 13.12.2015/14.12.2015 as passed in Complaint Case No. 1082(C) of 2015 whereby the learned J.M. 1st Class, Patna city took cognizance for the offences under Sections 323, 341, 379, 448, 504/34 of the Indian Penal Code (in short I.P.C).

2. Brief facts of the case as appears out of the complaint lodged by Opposite Party No. 2 namely, Mamta Devi, that petitioners are her neighbour where they used to demand *Rangdari* from her for Rs.5,000/- on monthly basis, if she wants to reside



peacefully in the locality. It appears further that on 20.07.2015 at about 08:00 PM petitioners/accused forcibly entered into the house of complainant/Opposite Party No. 2 and started to assault her by fist and slap. They also pressed her neck with intention to kill and immediately after the occurrence, snatched gold chain and also took away cash of Rs. 510/- from her house and forced her to put her signature on a stamp paper and also on three to four blank papers.

3. It is submitted by the learned counsel appearing on behalf of the petitioners that three days prior to lodging the present complaint petition as mentioned above, the wife of petitioner no. 1 namely Manju Devi lodged an F.I.R. against opposite party no. 2/complainant for the offences under Section 448, 341, 323, 379, 34 of the I.P.C. and to counter that case being retaliatory measures, the present false complaint case was lodged which is nothing but a malicious prosecution. It is submitted by learned counsel that out of minor neighborhood disputes and differences, the present false complaint was lodged. It is submitted that petitioner no. 1 is working as Head Constable in BSF and on the date of occurrence, he was on his duty posted somewhere in Orissa, whereas the petitioner no. 2 and 3 are minor sons, who were aged about 12 years and 10 years respectively on the date of occurrence. It is



submitted that due to minor altercation with wife of petitioner no. 1, the petitioners were implicated falsely through the present complaint.

4. At this stage, it is also submitted by learned counsel that the wife of petitioner no. 1 agree to compromise in Beur P.S. Case No. 167 of 2015 and would file a compromise petition accordingly on next date of hearing. While concluding argument, learned counsel submitted that now the cordial relations prevailed among the parties and in such circumstances it would be unjustified to continue with present proceedings. Learned counsel also relied upon the report of Hon'ble Supreme Court rendered in the case of *State of Haryana v. Bhajan Lal*, reported in 1992 *Supp (1) SCC 335*.

5. The notice was served upon the opposite party no. 2/complainant as it appears from the order dated 12.01.2017 but, she failed to join present proceedings.

6. From perusal of the records, it appears that on 18.08.2015, a case was lodged by wife of petitioner no. 1 wherein opposite party no. 2/complainant arrayed as an accused which has been registered as Beur P.S. Case No. 167 of 2015. The present complaint petition was lodged after three days of lodging of said F.I.R. which suggesting *prima facie* that the complaint case was



lodged as a retaliatory basis to counter Beur P.S. Case No. 167 of 2015. The matter is pending since 2016 where it appears out of submissions of learned counsel that the cordial relationship between the parties has now restored being neighbour and they have arrived on agreement to compromise the Beur P.S. Case No. 167 of 2015 also. It would be further apposite to reproduce para-102 of legal reports of **Bhajan Lal** (supra) which runs as:-

“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 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.”*

7. In view of the aforesaid factual and legal submissions, as the present complaint petition appears to be registered being a retaliatory measures where the cordial relations being neighbours has now appears to be restored between the parties, continuity with the present proceedings would nothing but amounts to misusing the process of law.

8. Consequent upon, the present quashing petition is allowed and the impugned order dated 13.12.2015/14.12.2015



passed in Complaint Case No. 1082(C) of 2015 and all consequential proceedings, if any, before the court of learned J.M. 1st Class, Patna city is hereby quashed and set aside.

9. A copy of this order be sent to Trial Court immediately.

(Chandra Shekhar Jha, J.)

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AFR/NAFR	NAFR
CAV DATE	N/A
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