

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.9290 of 2017

Arising Out of PS. Case No.-11 Year-2016 Thana- MUNGER COMPLAINT CASE District-
Munger

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Kuldip Mandal Son of Late Chhote Lal Mandal Resident of Village
Laxmanpur, P.O. P.S. - Jamalpur, District - Munger.

... .. Petitioner/s

Versus

1. State Of Bihar and Anr
2. Santu Paswan Son of Rama Paswan Resident of Village - Jagdishpur, P.S.
Jamalpur, District Munger.

... .. Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Mrigendra Kumar, Advocate

Mr. Ambika Bhagat, Advocate

For the Opposite Party/s : Mr. Sri Shyam Kumar Singh, APP

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CORAM: HONOURABLE MR. JUSTICE CHANDRA SHEKHAR JHA
ORAL ORDER

5 12-02-2024 1. Heard learned counsel appearing on behalf of the
petitioner and learned APP appearing on behalf of the State.

2. The present quashing petition preferred against the
order dated 22.10.2016 passed in Complaint Case No. 11C/2016
where learned Additional Chief Judicial Magistrate-II, Munger
pleased to take cognizance for the offences punishable under
Sections 436/34 of the Indian Penal Code against the petitioner
and other accused Sheo Shankar Paswan.

3. The complainant/Opposite Party No. 2, despite
valid service failed to join present proceeding.

4. As per case of complainant, petitioner alongwith
co-accused persons on 04.05.2014 at about 3:30 A.M. put



dwelling unit of complainant on fire causing killing of she-goat, cow and also calf where several house articles were also burnt. It is submitted that for the said occurrence an F.I.R. was lodged, which has been registered as Jamalpur P.S. Case No. 52/2014 where police after investigation submitted final form against all accused persons/petitioner stating thereof that no such occurrence as alleged took place. It is submitted that thereafter the protest was filed where five witnesses on behalf of complainant besides complainant himself were examined during the enquiry. It is submitted that none of the witnesses said to saw petitioner to put dwelling unit of complainant on fire. It is submitted that the maximum allegation what appears from the statement of enquiry witnesses that petitioner was found running alongwith co-accused Shankar Paswan who was alleged to be put house of petitioner on fire. It is further submitted that the complainant/informant is not the eye-witness of the occurrence and himself admitted that there is land dispute between the parties. It is further pointed out by learned counsel that complainant witness-3 namely, Meena Devi and complainant witness-4 Kanchan Devi specifically stated during enquiry that co-accused sheo shankar and Sandeep Mandal put dwelling unit of complainant on fire, where on court question she stated that



she is not the eye witness of the occurrence, whereas complainant witness-5 Lalita Devi said about Kuldip Mandal to put dwelling unit on fire. It is submitted that occurrence took place in the background of land dispute, which is an admitted position. Learned counsel further submitted that it is nothing but misuse of the process of law, as the present prosecution is nothing but a malicious prosecution as it would amount to facing the trial by this petitioner for no involvement in alleged occurrence.

5. Learned APP, while appearing on behalf of the State submitted that almost all enquiry witnesses during enquiry stated that the petitioner was present along with co-accused persons and put dwelling unit of complainant on fire. It is submitted that the presence of petitioner with co-accused persons was supported by all enquiry witnesses, which is sufficient to constitute a *prima facie* case. It is further submitted that at this stage, meticulous examination of enquiry witnesses and factual analysis is not permissible under the law.

6. 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 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.”

7. In view of the above discussed fact, as the petitioner was found present on the place of occurrence, supported by different enquiry witnesses, it cannot be said that a *prima facie* case is not made out against the petitioner in view of guideline no. 1 in **Bhajan Lal** (*supra*) and as such there is no occasion to interfere with impugned order dated 22.10.2016,



taking cognizance of the offence.

8. Accordingly, the present quashing petition stands dismissed.

9. At this stage, learned counsel appearing for the petitioner submitted that a liberty be given to raise all such issue at the time of framing of charge before the learned trial court itself.

10. Considering the aforesaid, petitioner, if so desired/ advised, may raise all such issue before learned trial court itself at appropriate stage.

(Chandra Shekhar Jha, J)

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