

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.14109 of 2016

Arising Out of PS. Case No.-1007 Year-2015 Thana- PATNA COMPLAINT CASE District-
Patna

Pranoy Kumar @ Pranay Kumar Son of Late Tarkeshwar Sinha. Chief
Manager, Asset Recovery Management Branch Allahabad Bank, Budha Marg,
Patna- Gaya Road, P.S Kotwali, Patna- 800001

... .. Petitioner/s

Versus

1. State Of Bihar and Anr
2. Dharmendra Kumar Ambashtha, resident of Mohalla and Post- Sona
Gopalpur Dih, Police Station- Gopalpur, District- Patna- 800007.

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr. Ajay Kumar Sinha, Sr. Advocate
	:	Mr. Ajit Kumar Sinha, Advocate
	:	Ms. Dilkash Khan, Advocate
For the Opposite Party No. 2 :	:	Mr. Ajit Ranjan Kumar, Advocate
For the Opposite Party/s :	:	Mr. Dilip Kumar, APP

CORAM: HONOURABLE MR. JUSTICE CHANDRA SHEKHAR JHA
ORAL ORDER

7 16-02-2024 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 06.11.2015 passed in Complaint Case
No. 1007C of 2015, where learned Judicial Magistrate, 1st Class,
Patna took cognizance for the offences punishable under
sections 323 and 504 of the Indian Penal Code against the
petitioners.

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

4. As per case of prosecution it appears from the



complaint petition dated 04.03.2015, when complainant visited to Allahabad Bank, Budha Marg, Gaya Road, Patna, where petitioner was working as Chief Manager (Asset Recovery), alleged him not to clear the retirement benefits of the opposite party no.2, where the amount in issue was claimed as retiral benefit was about Rs. 15,00,000/- which was not released on repeated request. As per the narration of the complaint petition complainant stood as guarantor to a loan, for plastic industry of his son, which is settled under One Time Settlement (OTS) for Rs. 3,00,000/- on 05.01.2009 and thereafter a schedule was prepared for payment of the said amount, where O.P. No. 2 paid such amount as per details given in complaint petition but despite of this fact loan amount was not settled to clear his pension. In connection with aforesaid dispute when, complainant went to bank on 02.03.2015 for enquiry, hot exchange of words took place between petitioner and O.P. No. 2, where it further appears that during the course of occurrence petitioner was humiliated by the complainant.

5. It is submitted by learned counsel that from the entire perusal of the complaint petition it nowhere, appears that simple hurt was caused to complainant by petitioner, who was working as Chief Manager (Asset Recovery), Management



Branch of the said bank. It is submitted that when petitioner did not succumb before undue pressure of the complainant, the present false case was lodged. It is also pointed out that petitioner was only discharging his official duty. While concluding the argument it is submitted that there is no material out of complaint petition which may suggest that any, *prima facie*, case is made out in terms of cognizance order. It is further submitted that complaint petition is not supported by affidavit and appears in violation of law. In support of his submissions learned counsel relied upon the report of Hon'ble Supreme Court in the case of **Priyanka Srivastava Vs. State of Uttar Pradesh** as reported in **(2015) 6 SCC 287**.

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 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.”

7. Learned APP duly assisted by learned counsel appearing on behalf of O.P. No. 2 submitted that it is a case of mishandling and therefore cognizance under Section 323 of the IPC cannot be said bad in eyes of law.

8. From the perusal of records and by taking note of rival submissions as canvassed by learned counsel appearing on behalf of the parties, it appears that the maximum allegation what appears through complaint petition is of manhandling by petitioner to O.P. No. 2, where offence under Section 323 of the IPC is a distinct offence having defined legal ingredient to attract a, *prima facie*, case “mishandling” by any stretch of argument cannot be equated with “hurt” as defined under section 319 of Indian Penal Code and moreover, the complaint is also not supported by affidavit, which appears, *prima facie*, in violation of **Priyanka Srivastava (supra)**.

9. In view of aforesaid factual and legal discussions impugned order dated 06.11.2015 and all its consequential proceedings arising thereof as passed in Complaint Case No. 1007C of 2015 pending before learned Judicial Magistrate, 1st



Class, Patna, *qua*, petitioner 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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