

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.44195 of 2016

Arising Out of PS. Case No.-28903 Year-2014 Thana- PATNA COMPLAINT CASE District-
Patna

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Dr. Kundan Singh @ Kundan @ Kundan Kumar Singh S/o Sri Ramchandra Singh R/o Flat No. 002, Urvashi Apartment, Near Bahadurpur Flyover, Kankarbagh Road, P.S. - Kankarbagh, District - Patna.

... .. Petitioner/s

Versus

1. State of Bihar
2. Shravan Kumar S/o Late Sant Prasad R/o Mohalla - Bhagwat Nagar, P.S. - Kamhrar, District - Patna.

... .. Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Ravindra Kumar, Advocate
For the Opposite Party/s : Mr. S.M. Rahman, APP

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CORAM: HONOURABLE MR. JUSTICE CHANDRA SHEKHAR JHA
ORAL JUDGMENT

Date : 26-06-2024

Heard learned counsel for the petitioner and

learned counsel for the respondents.

2. The present quashing petition has been preferred to quash the order dated 21.05.2015 passed in Complaint Case No. 28903 (C) of 2014, where learned Judicial Magistrate, 1st Class, Patna took cognizance for the offences punishable under Sections 323, 504, 379 and 34 of the Indian Penal Code against the petitioner.

3. Opposite Party No. 2 is duly represented in the present court proceedings.

4. From the crux of complaint petition it



appears that one Shravan Kumar filed a complaint on 08.09.2014 in the court of learned Chief Judicial Magistrate, Patna against the petitioner alleging inter alia that on 24.08.2014 as usual, when he was on duty at R.S. Villa then at about 11 'o' clock accused alongwith 4-5 unknown persons, whom he can identify, arrived and assaulted him, while abusing him they said that reason for water logging is high plinth of his house (R. S. Villa) and he should lower the plinth. It was said that cause of water logging is his house, which is being constructed at high plinth. Complainant claimed not at fault, if the house of petitioner has low plinth, upon which accused persons including petitioner became enraged and started assaulting with legs and fists. On his cry and alarm, nearby persons assembled thereof and on seeing them accused persons fled away and while fleeing away accused (petitioner) took away golden chain of 2 bhar (equivalent to 20 grams) and one Titan watch of cost to Rs. 2000/-, while other accused persons took away



water pump having cost about Rs. 2500/- and also threatened to lower down the plinth of the house otherwise will have to face evil/dire consequences. He gave this information to the local police station but neither any action has been taken against the accused persons, nor FIR has been lodged, resultantly present complaint was filed.

5. It is submitted by learned counsel for the petitioner that present case is a classical example of malicious prosecution out of ulterior and oblique motive for the reason as petitioner, who is law abiding citizen and neighbour of the complainant, who came to Patna from USA during his vacation to see his old and ailing parents, where he objected illegal construction of complainant, which was the root cause for water logging in front of his house, causing disturbance to petitioner and his old and ailing parents. It is submitted by learned counsel that as per Municipal Corporation report which is annexed as Annexure no. 4, of the present petition,



validity of the construction plan/approved map was expired on 06.02.2014 itself, and therefore the ongoing construction work was completely illegal. It is submitted that before filing present complaint dated 29.08.2014, petitioner made a complaint to Patna Municipal Corporation on 25.08.2014 regarding aforesaid ongoing illegal construction.

6. It is submitted that the moment complaint was lodged by petitioner on 25.08.2014 (as per annexure no. 3) to the Patna Municipal Corporation, came into knowledge of the owner of the building, who was involved in ongoing construction of R.S. Villa, lodged the present false criminal case on 08.09.2014 making instrumental his security guard/complainant for the occurrence dated 24.08.2014 on the false, frivolous and purely on imaginary grounds, whereas in actual no such occurrence took place as alleged through present complaint petition. It is pointed out that petitioner is a highly educated research scholar and working as



professor in "Sofia University", USA.

7. It is further submitted by learned counsel that the occurrence being criminal act was not reported to local police station. It is pointed out that the compliance of legal provisions as available under Section 154 (3) of the Cr.P.C. did not appears followed in present case and on this score alone, present criminal complaint must be quashed. It is further submitted that the allegation against this petitioner is to assault complainant/care taker of R.S. Villa and while running away from the place of occurrence snatched golden chain and watch worth Rs. 2,000/-. It is pointed out that allegation apparently appears false on its face as golden chain and watch is not a routine normal wearing as same is related with personal choice, therefore specific averment, regarding wearing of golden chain and watch by the complainant must be made available since before the occurrence to make out a, *prima facie*, case for the offence under Section 379 of the IPC. It is submitted



that as the prime allegation, which appears is of theft regarding snatching of golden chain and watch appears doubtful as submitted, in view of same, secondary allegation, *qua*, assault and abuse is also appearing not convincing as same appears only aggravate the allegations. It is submitted that complainant was not examined medically.

8. In view of aforesaid fact it is submitted that present criminal prosecution is only out of ulterior and oblique motive due to neighbourhood disputes and differences and as a retaliatory measures, where owner of complainant was found himself involved in illegal construction causing disturbance to the petitioner and his family members, it was lodged by the complainant only with harassing attitude. In support of the submissions learned counsel relied upon the report of Hon'ble Supreme Court in the case of **State of Haryana and Others vs. Bhajan Lal and Others reported in 1992 Supp (1) Supreme Court Cases 335.**



9. Learned APP duly supported by learned counsel for O.P. No. 2, while opposing the application submitted that the allegation as to snatch watch and golden chain is specific against the petitioner. It is also pointed out that the allegation of assault appears specific against petitioner also, where petitioner must restrain himself as to involve in such illegal act, being a highly educated person. It is submitted that the meticulous examination of the witnesses cannot be done at this stage. It is further submitted that power under Section 482 of the Cr.P.C. to be exercised sparingly and not in routine manner. It is further submitted that fact of this case not suggesting any occasion as to interfere with the finding of the learned Trial Court taking cognizance for the occurrence. In support of his submissions learned counsel relied upon the report of Hon'ble Supreme Court in the case of **State Through Special Cell, New Delhi Vs. Navjot Sandhu @ Afshan Gure and Others** as reported in **(2003) 6 SCC 641.**



10. It would be apposite to reproduce the paragraph no. 102 of the Apex Court decision in the case of **Bhajan Lal Case (supra)** 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.”

11. It would also be apposite to reproduce



the paragraph no. 27 of the **Navjot Sandhu Case**
(supra) which reads as under:

27. In the case of *State of Karnataka v. M. Devendrappa* [(2002) 3 SCC 89 : 2002 SCC (Cri) 539] this Court has held that the High Court has inherent power under Section 482 of the Criminal Procedure Code to quash proceedings. It is held that the power should not be exercised to stifle a legitimate prosecution. It is held that the High Court should not assume the role of a trial court and embark upon an enquiry. It is held that the power should be exercised sparingly, with caution and circumspection.

12. In view of aforesaid factual and legal discussions, though this Court is alive with legal position that power under Section 482 of Cr.P.C. must be used sparingly but it appears that present criminal complaint was filed against petitioner on 08.09.2014, before



which, regarding illegal construction as carried out by owner of the R.S. Villa, a complaint was made on 25.08.2014, by petitioner to Municipal Corporation of Patna. It appears that on the basis of said complaint of petitioner certain enquiry was initiated by Patna Municipal Corporation against ongoing construction, where complainant was employed as a security guard, which found illegal thus, *prima facie*, suggesting that the present criminal complaint was lodged as a retaliatory measure out of ulterior and oblique motive against petitioner as to restrain him to pursue complaint dated 25.08.2014. Beside above, this court further finds force in the submission of learned counsel for the petitioner that the golden chain and wrist watch as alleged to be snatched by complainant is not a compulsory wearing and is a matter of personal choice therefore specific averments must be available in complaint that complainant at the time of occurrence was wearing golden chain and watch, as to satisfy the, *prima facie*,



allegation of snatching to import the offence of theft.

13. In view of the facts, as discussed aforesaid, present case appears to be covered under the guidelines as mentioned in para nos. 1, 5 and 7 of **Bhajan Lal Case (supra)**, therefore impugned order of cognizance dated 21.05.2015 with all its consequential proceedings, *qua*, petitioner arising thereof as passed in Complaint Case No. 28903 (C) of 2014, pending before learned Judicial Magistrate, 1st Class, Patna is hereby quashed and set aside.

14. Hence, this application stands allowed.

15. TCR (Trial Court Records), if any, be returned to the learned Trial Court alongwith the copy of this judgment.

(Chandra Shekhar Jha, J.)

S.Tripathi/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	29.06.2024
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