

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.43162 of 2016

Arising Out of PS. Case No.-177 Year-2015 Thana- KATEYA District- Gopalganj

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1. Vinod Prasad @ Vinod Kumar Singh Son of Babu Ram Bhagat
 2. Babu Ram Bhagat@Babu Ram Prasad Son of late Ramjas Bhagat Both Resident of Village- Koesa Khurd, PS Kateya, District Gopalganj.

... .. Petitioner/s

Versus

1. State of Bihar
2. Sobrati Miyan Son of late Dosh Miyan Resident of Village- Rajapur, P.S. Kateya, District Gopalganj.

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Sanjay Kumar Pandey No-5, Advocate
For the Opposite Party/s : Mr. Arun Kumar, APP

CORAM: HONOURABLE MR. JUSTICE CHANDRA SHEKHAR JHA
ORAL JUDGMENT

Date : 25-04-2024

1. This application preferred for quashing of the order dated 19.05.2016 passed by the Learned Chief Judicial Magistrate, Gopalganj, passed in Trial No. 2406/2016 (arising out of Kateya P.S. Case No. 177/2015; G.R. No. 4115/2015), whereby and where under the Learned Chief Judicial Magistrate, Gopalganj has taken cognizance against the accused/petitioners under section 379, 504 & 506 of the Indian Penal Code.

2. The present prosecution arises out of a



complaint case being Complaint Case No. 2563/2015, filed by the O.P. No. 2, on 28.08.2015.

3. In the complaint case above referred, it has been stated that on 18.08.2015 at about 08:00 A.M. in morning both the petitioners and three unknown persons came to the O.P. No. 2; who was working in his field having Khata No. 209, Khesra No. 1287 having an area of 1- 4-15 dhoors and started abusing the O.P. No. 2. It has been stated that the Petitioner No. 1 was having a Desi Katta in his hand (who put it on the head of O.P. No. 2) and the other persons were holding sticks in their hands. It has been further alleged that the when the O.P. No. 1 objected to the abuses, it was stated by the accused persons that it is the O.P. No. 2, by the efforts of whom the D.C.L.R. has rejected the Praman Patra of the Petitioners. It was threatened that the accused/petitioners would kill the O.P. No. 2 for the reasons of the cancellation of the Praman Patra. It has been further alleged that the Petitioner No. 2 has taken



Rs. 1,000/- from the pocket of the O.P. No. 2. When alarm was raised the Petitioner No. 1 fired in the air and ran away.

4. With aforesaid background of allegations, initially a complaint case was filed before learned C.J.M., Gopalganj, which has been registered as Complaint Case No. 2563/2015 dated 28.08.2015, which has been sent to concerned police station to investigate the matter after lodging FIR by exercising power as available under Section 156(3) of Cr.P.C., pursuant to that Kateya P.S. Case NO. 177/2015 was lodged. After completion of investigation, police by exonerating both petitioners submitted final form.

5. Learned counsel appearing for the petitioners submitted that Complaint Case No. 2563/2015, which was sent to concerned police station to lodge FIR was not duly supported by affidavit and on this score alone, the order of cognizance is liable to be set aside.



6. In support of his submissions, learned counsel relied upon the legal reports of the Hon'ble Supreme Court as reported in the matter of **Priyanka Srivastava and Another Vs. State of Uttar Pradesh and Others** as reported in [(2015) 6 SCC 287].

7. It is further submitted that before lodging this criminal case, several proceedings related with disputed piece of land was initiated by informant at different forums, where on defeat, the present false criminal case was lodged just to harass the petitioners with ulterior and oblique motives and as such, the present prosecution is nothing but a malicious prosecution.

8. In support of his submissions, learned counsel relied upon the legal reports of the Hon'ble Supreme Court as reported in the matter **State of Haryana and Ors. Vs. Bhajan Lal and Ors.** reported in **1992 Supp (1) Supreme Court Cases 335.**

9. It is further submitted that civil dispute



was given a criminal colour as both petitioners came into possession of 19 decimal of land through Bihar Bhudan Yagh Committee, where informant encroached 2 decimal of land which is the crux of disputes. In support of this submissions, learned counsel referred Annexure-III and IV of present petition besides Annexure-V.

10. It is further submitted that as per annexure-VI & VII which are reports regarding cite measurement of land suggest that 2 decimal of land was encroached by informant. It also appears that matter travel up to Gram Kachhari for verification. All such proceedings suggests that informant was one of the party and as such present criminal prosecution appears only to cover up civil dispute.

11. In support of his aforesaid submission, learned counsel relied upon the legal report of the Hon'ble Supreme Court as reported in the matter of **Usha Chakraborty and Another vs. State of West Bengal and Another** reported in **2023 SCC OnLine**



SC 90.

12. While concluding the argument, learned counsel submitted that the cognizance order dated 19.05.2016, which is the impugned order is not explaining any reason while taking a different view from the finding of investigating agencies, where the petitioners were exonerated from criminal liabilities as alleged. It is submitted that the learned trial court was duty bound to explain the reason while taking cognizance by taking a different view, where accused exonerated upon investigation.

13. Despite service of notice personally upon O.P. No. 2, he failed to join the present proceedings.

14. Learned APP appearing for State, while opposing the application submitted that during investigation, informant supported the entire occurrence through his re-examination who is the real victim of the crime and his statement is sufficient to make out a prima facie case.



15. It would be apposite to reproduce the para nos. 30 and 31 of the **Priyanka Srivastava Case (supra)**, which reads as under :-

30. In our considered opinion, a stage has come in this country where Section 156(3) CrPC applications are to be supported by an affidavit duly sworn by the applicant who seeks the invocation of the jurisdiction of the Magistrate. That apart, in an appropriate case, the learned Magistrate would be well advised to verify the truth and also can verify the veracity of the allegations. This affidavit can make the applicant more responsible. We are compelled to say so as such kind of applications are being filed in a routine manner without taking any responsibility whatsoever only to harass certain persons. That apart, it becomes more disturbing and alarming when one tries to pick up people who are passing orders under a statutory provision which can be challenged under the framework of the said Act or under Article 226 of the Constitution of India. But it cannot be done to take undue advantage in a criminal court as if somebody is determined to settle the scores

31. We have already indicated that there has to be prior applications under Sections 154(1) and 154(3) while filing a petition under Section 156(3). Both the aspects should be clearly spelt out in the application and necessary documents to that effect shall be filed. The warrant for giving a direction that an application under Section 156(3) be supported by an affidavit is so that the person making the application should be conscious and also endeavour to see that no false affidavit is made. It is because once an affidavit is found to be false, he will be liable for prosecution in accordance with law. This will deter him to casually invoke the authority of the Magistrate under Section 156 (3). That apart, we have already stated that the veracity of the same can also be verified by the learned



Magistrate, regard being had to the nature of allegations of the case. We are compelled to say so as a number of cases pertaining to fiscal sphere, matrimonial dispute/family disputes, commercial offences, medical negligence cases, corruption cases and the cases where there is abnormal delay/laches in initiating criminal prosecution, as are illustrated in Lalita Kumari [(2014) 2 SCC 1 : (2014) 1 SCC (Cri) 524] are being filed. That apart, the learned Magistrate would also be aware of the delay in lodging of the FIR.

16. It would be apposite to reproduce relevant Paragraph No. 6 of **Usha Chakraborty case (supra)**, which reads as:-

6. In *Paramjeet Batra v. State of Uttarakhand & Ors.*, this Court held:-

"12. While exercising its jurisdiction under Section 482 of the Code of the High Court has to be cautious. This power is to be used sparingly and only for the purpose of preventing abuse of the process of any court or otherwise to secure ends of justice. Whether a complaint discloses a criminal offence or not depends upon the nature of the facts alleged therein. Whether essential ingredients of criminal offence are present or not has to be judged by the High Court. A complaint disclosing civil transactions may also have a criminal texture. But the High Court must see whether a dispute which is essentially of a civil nature is given a cloak of criminal offence. In such a situation, if a civil remedy is available and is, in fact, adopted as has happened in this case, the High Court should not hesitate to quash the criminal proceedings to prevent abuse of process of the court."

17. It would be further apposite to reproduce



relevant Paragraph No. 102 of **Bhajan Lal case**
(supra), which reads 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 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."

18. It would be appropriate to reproduce the order dated 19.05.2016, which is impugned order of cognizance, which reads as under:

"न्यायालय, अपर मुख्य न्यायिक दण्डाधिकारी, XIII, गोपालगंज विचारण से 2406/2006

सरकार बनाम विनोद प्रसाद वो0

सूचक अनुपस्थित है।

अभिलेख का अवलोकन किया गया। प्रस्तुत बाद के आई०ओ० के द्वारा भूमि विवाद दिखाते हुए अंतिम प्रतिवेदन समर्पित किया गया है। लेकिन प्राथमिकी एवं कैश डायरी के अवलोकनोपरान्त प्राथमिकी के दो नामजद अभियुक्तों के विरुद्ध प्रथम दृष्टया का मामला बनता प्रतीत होता है।

अतः प्राथमिकी के दो नामजद अभियुक्तों क्रमशः विनोद प्रसाद एवं बाबुराम भगत

Kateya 177/15

19.05.16

के विरुद्ध प्रथम दृष्टया का मामला पाते हुए भा०द०वि० की धारा 379, 504 एवं 506 के अन्तर्गत अपराध के लिए संज्ञान लिया



जाता है तथा वाद के विचारण एवं निष्पादन हेतु A.C.J.M. XIII न्यायिक
दण्डा० की संचिका में स्थानान्तरित किया जाता है।
वदी दिनांक 15.07.16 वास्ते उपस्थिति। कार्यालय अभियुक्तों के
विरुद्ध सम्मन निर्गत करें।

लेखापित

ह०/-अस्पष्ट

C.J.M.”

19. In view of above factual submissions, it appears that both parties are in litigating terms for a piece of land, where on different forums parties entered into quasi-judicial proceedings. It also appears from the complaint, which is the basis of present FIR that same is not supported by any affidavit, while it was sent to concerned police station as to lodge FIR in issue.

20. In view of aforesaid factual background and by taking guiding notes of **Priyanka Srivastava Case (supra)** and also of **Usha Chakraborty case (supra)**, the impugned order of taking cognizance dated 19.05.2016 with all its consequential proceedings, *qua*, petitioners, arising thereof as passed in connection with Tr. No. 2406/2016 (arising out of Kateya P.S. Case No. 177/2015; G.R. No. 4115/2015) pending before



learned Chief Judicial Magistrate, Gopalganj, is hereby
quashed and set aside.

21. Hence, this application stands allowed.

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

(Chandra Shekhar Jha, J)

archana/-

AFR/NAFR	NAFR
CAV DATE	NA
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