

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.80579 of 2018

Arising Out of PS. Case No.-3766 Year-2015 Thana- PATNA COMPLAINT CASE District-
Patna

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1. Riyasat Ali Son of Maula Bax
 2. Md.Firoz Hussain @ Firoz Hussain Son of Riyasat Ali
 3. Mamto Khatoon @ Mamta Hussain Wife of Riyasat Ali
 4. Sonobe Shah @ Shawar Sonber Wife of Firoz Hussain
 5. Md. Sahabuddin Son of Md. Moin All Resident of Mohalla - Sangam Colony, P.S.- Digha, District - Patna

... .. Petitioner/s

Versus

1. State of Bihar
2. Afroz Anwar Son of Late Anwarul Hussain All Resident of Mohalla - Sangam Colony, I.T.I. Digha Ghat, P.S.- Digha, District - Patna

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr. Sanjiv Sharan, Advocate Mr. Santosh Kumar, Advocate Mr. Sanjay Kumar Mishra, Advocate
For the Opposite Party/s	:	Mr. Hemant Kumar, Advocate
For the State	:	Mr. Bhanu Pratap Singh, APP

CORAM: HONOURABLE MR. JUSTICE CHANDRA SHEKHAR JHA
ORAL JUDGMENT

Date : 23-04-2024

1. The present petition preferred for quashing the order dated 22.01.2016 passed by Learned Sub-Judge-VIII cum Additional Chief Judicial Magistrate, Patna passed in Complaint Case No. 3766/C/15, whereby Cognizance has been taken against all the petitioners under Sections 323, 379, 384, 504 read with



section 34 of the Indian Penal Code (in short "IPC").

2. The Prosecution case as alleged in the above said Complaint Case No. 3766/C/16 in brief is as follows:-

(i) That the petitioners and opposite party no. 2 are the neighbours. It is alleged by the opposite party no. 2/ complainant that petitioner along with the others tried to snap illegal photographs of our female members. It is also alleged that the petitioners have fixed some video cameras in front of his house and taken illegal photographs of every passerby before his house. It is alleged that on 28.10.2015 at about 8'0 clock in the night petitioners Reyasat Ali, Firoz Hussin and Md. Sahabuddin entered house of Opp. Party No. 2, namely, Afroz Anwer and threatened him that they had some photographs of his family members and the family members of the witnesses and case, with threat that if they would go to the Police Station to lodge any complaint against them then the petitioner would display



all the said photographs in public. On 01.11.2015, it is alleged that the petitioners called the Opp. Party in his house. Afroz Anwer went there with Khatib Anwer, where the petitioner no. 1, Riyasat Ali gave an envelop to them. The opposite party became astonish to see the illegal photographs of his family members. It is also alleged that petitioners Firoz and Shahabuddin had brought two blank papers and said them to sign and to write on said papers that all the Complaints lodged by opposite party are false. The opposite party had written and signed on the said paper as per the direction of the petitioners. It is also alleged that after this episode all the petitioners had assaulted and abused the opposite party and also snatched the golden chain of the opposite party no. 2 and the wrist watch of khatib Anwer. It is also alleged that when the Police has not lodged any F.I.R. then this complaint case has been filled by the opposite party.

3. Learned counsel appearing for the



petitioners submitted that petitioners are neighbours of opposite party no. 2 and out of parking and other allied neighbourhood issues, one altercation took place in year 2014 for which petitioners lodged a complaint case against O.P. No. 2, which was registered as Complaint Case No. 24812(C) of 2014, where cognizance was taken for the offence alleged to be committed under Sections 323 and 379 of IPC, where after trial O.P. No. 2 was convicted for the offence under Sections 323 and 452 of IPC. It is submitted that after lodging aforesaid complaint case, a complaint case was also lodged by O.P. No. 2 against petitioners, which was registered as Complaint Case No. 25738/14, which upon enquiry dismissed under Section 203 of Cr.P.C., where, by and large the nature of allegations is similar to that of present case. It is submitted that when the earlier complaint, as aforesaid, registered by the complainant was dismissed, the present complaint case with variations of certain allegation, purely upon imaginary



grounds was lodged. It is submitted that the narration of the complaint is not satisfying the *prima facie* legal ingredients of the offence under which cognizance was taken by learned trial court. It is pointed out that the narration of complaint nowhere suggests that the complainant alongwith witnesses went to house of O.P. No. 2, as alleged by wearing golden chain and the wrist watch and as such, there was no occasion to snatch all these items as alleged through complaint petition. It is further pointed out that no obscene photograph was made available by complainant as alleged.

4. In aforesaid factual background, learned counsel referred the legal report of Hon'ble Supreme Court as reported in the matter of ***State of Haryana and Others vs. Bhajan Lal and Others*** reported in ***1992 Supp (1) Supreme Court Cases 335*** and submitted that the present criminal proceedings is maliciously instituted with an ulterior motive for wreaking vengeance of petitioners with a view to spite them due to private and personal grudge.



5. Heard learned APP appearing for the State.

6. Learned counsel Mr. Hemant Kumar appearing for the O.P. No. 2, while opposing the application submitted that each complaint case is to be looked into its own facts and circumstances, emphasizing argument learned counsel pointed out that the narration of this case is clearly established a *prima facie* case for the offence under Sections 379, 323, 384 and 504 of IPC. While arguing the matter, it is fairly submitted that the annexed photographs with complaint petition is only showing the position of the CCTV as installed by the petitioners.

7. In the factual context of present case for the better understanding of legal position it would be apposite to reproduce Sections 321, 378, 383 and 504 of IPC, which are as under:

321. Voluntarily causing hurt.—Whoever does any act with the intention of thereby causing hurt to any person, or with the knowledge that he is likely thereby to cause hurt to any person, and does thereby cause hurt to any person, is said "voluntarily to cause hurt".

378. Theft.—Whoever, intending to take dishonestly any movable property out of the possession of any person without that person's consent, moves that property in order to such taking, is said to commit theft.

383. Extortion.—Whoever intentionally puts any person in fear of any injury to that person, or to any other, and thereby dishonestly induces the person so put in fear to deliver to any



person any property, or valuable security or anything signed or sealed which may be converted into a valuable security, commits "extortion".

504. Intentional insult with intent to provoke breach of the peace.—Whoever intentionally insults, and thereby gives provocation to any person, intending or knowing it to be likely that such provocation will cause him to break the public peace, or to commit any other offence, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

8. It would be appropriate to reproduce the paragraph no. 102 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."

9. In view of aforesaid factual and legal submissions, it appears that the O.P. No. 2, namely, Afroz Anwar was earlier convicted for the offence under Sections



323 and 452 of IPC, where petitioner no. 1 was the complainant, during the pendency of aforesaid trial a complaint case no. 25738/14 was lodged by present complainant, which was dismissed under Section 203 of Cr.P.C. on 06.09.2014, where the allegation is almost similar to that of present complaint. It also appears from the complaint petition that complainant nowhere stated through narration that they visited the house of petitioners/accused persons by wearing chain and the wrist watch, which is not a normal and necessary wearing, creating a *prima facie*, material doubt qua allegation of snatching to establish a case for the offence under Section 379 of IPC and moreover, there is no obscene photographs on record and no misuse of blank papers signed by opposite party surfaced in last about ten years as to attract allegation of extortion, similarly narration of complaint, *prima facie*, also appears to fail satisfy, allegation for offence under Section 504 of IPC, in want of provocation, which may cause break the public peace.

10. In view of above, the present complaint is



appearing almost with same allegation after dismissal of complaint case no. 25738/14 vide order dated 06.09.2014. Therefore, by taking guiding notes of guidelines nos. 1, 5 & 7 of **Bhajan Lal Case (supra)**, the impugned order of taking cognizance dated 22.01.2016 *qua* petitioners with all its consequential proceedings, arising thereof, as passed in Complaint Case No. 3766/C/15 pending before learned Sub-Judge-VIII-cum-Additional Chief Judicial Magistrate, Patna, is hereby quashed and set aside.

11. Hence, this application stands allowed.

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

(Chandra Shekhar Jha, J)

Archana/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	25.04.2024
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