

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.17103 of 2024

Arising Out of PS. Case No.-397 Year-2023 Thana- BHABHU(KAIMUR) COMPLAIN C
District- Kaimur (Bhabua)

Manish Kumar Mishra, Son Of Bhagawati Sharan Mishra Resident of H. No. 382, Kalindi Basti, Bhuiyadih, P.S. - Sitaram Dera, Jamshedur, Jharkhand.

... .. Petitioner/s

Versus

1. The State of Bihar.
2. Upendra Pandey Son Of Mukhram Pandey R/o Village - Sonvarsa, P.S.- Belav, Dist- Kaimur (BHABUA).

... .. Opposite Party/s

with

CRIMINAL MISCELLANEOUS No. 36119 of 2024

Arising Out of PS. Case No.-397 Year-2023 Thana- BHABHU(KAIMUR) COMPLAIN C
District- Kaimur (Bhabua)

1. Yogendra Kumar Pandey son of Late Sitaram Pandey R/o 26/E, Baridih Basti, Shakti Nagar, Near- Bharat Gas Godown, P.S.- sidgora (Jamshedpur), Dist.- East Singhbhum, Jharkhand.
2. Bhagmati Devi W/o Yogendra Kumar Pandey R/o 26/E, Baridih Basti, Shakti Nagar, Near- Bharat Gas Godown, P.S.- sidgora (Jamshedpur), Dist.- East Singhbhum, Jharkhand.
3. Priyanka Kumari @ Kumari Priyanka D/o Yogendra Kumar Pandey R/o 26/E, Baridih Basti, Shakti Nagar, Near- Bharat Gas Godown, P.S.- sidgora (Jamshedpur), Dist.- East Singhbhum, Jharkhand.
4. Jitendra Tiwari @ Jitendra Kumar Tiwari Son of Parasnath Tiwari R/o 26/E, Baridih Basti, Shakti Nagar, Near- Bharat Gas Godown, P.S.- sidgora (Jamshedpur), Dist.- East Singhbhum, Jharkhand.

... .. Petitioner/s

Versus

1. The State of Bihar.
2. Upendra Pandey Son of Mukhram Pandey R/o village- Sonbarsha, P.O.- Miw, P.S.- Belaon, District- kaimur (Bhabhua), At present- R/o Ward No. 11 (Bhabhua) Chakbandi Road, Near Gayatri Mandir, P.S.- Bhabhua, District- Kaimur (Bhabhua).

... .. Opposite Party/s

Appearance :

(In CRIMINAL MISCELLANEOUS No. 17103 of 2024)

For the Petitioner/s : Mr.Brisketu Sharan Pandey, Advocate

For the Opposite Party/s : Mr.Amitesh Kumar, APP



(In CRIMINAL MISCELLANEOUS No. 36119 of 2024)
For the Petitioner/s : Mr. Bachan Ojha, Advocate
For the Opposite Party/s : Ms. Pushpa Sinha.1, APP

CORAM: HONOURABLE MR. JUSTICE CHANDRA SHEKHAR JHA
ORAL JUDGMENT
Date : 10-04-2025

Heard learned counsel appearing on behalf of the parties.

2. Both aforesaid applications have been filed for quashing the cognizance order dated 30.10.2023 passed by the Ld. Additional Chief Judicial Magistrate-V, Kaimur at Bhabhua (herein referred as "ACJM") whereby and whereunder cognizance was taken against petitioners for the offence under sections 341, 323 & 386 of IPC in connection with Complaint Case No. 397 of 2023 (which is a protest petition converted into complaint petition arising out of filing of final form bearing Final Report No. 81/22 dated 19.12.2022 by the prosecution finding the averments made in the FIR in relation to Bhagwanpur (Belav) P.S. Case No. 192/2022 dated 06.09.2022 to be incorrect/false one.)

3. Prosecution case in brief is that the brother of the opposite party No. 2 and daughter of the accused No. 1, namely Yogendra Pandey (in Cr. Misc. No. 36119 of 2024) are husband and wife and, therefore, the opposite party No. 2 and the accused No. 1 are relative. There is some matrimonial dispute amongst the Priyanka Kumari @ Kumari Priyanka and the brother of the



complainant i.e. O.P. No. 2 namely Ravindra, which resulted into institution a complaint case before the Family Court, Jamshedpur, which was subsequently sent for investigation under 156(3). O.P. No. 2 as also the accused No.1 entered into settlement and agreed for dissolving the marriage against one time alimony. Opposite party No.2 alleges that it was informed to the accused Nos. 1 and 2 that since the case related to the younger brother of the opposite party No. 2 therefore it would be appropriate to clear the terms of settlement in his presence. Opposite party No. 2 invited the accused persons for a talk at his native place in Bhabhua. On 05.06.2022 the accused persons including the petitioners are alleged to have come to the native place of opposite party No.2 at Village-Sonbarsa in Bhabhua District. Opposite party No. 2 who was at Bhabhua got to know about the arrival of accused persons including the petitioners and upon receiving such information he too went to his native village Sonbarsa. The accused persons were adamant on dissolving the marriage and were asking for the money spent in the marriage by the accused persons. On the said date i.e. 05.06.2022 co-incidentally, opposite party No.2 received funds worth Rs.5,30,000/- from the PACS Chairman against the food grains sold by his family. Opposite party No.2 was required to take aforesaid money to Bhabhua. The accused persons while



returning asked the O.P. No. 2 not to carry so much cash on motor bike and requested for dropping him to Bhabhua which would come in route. In midway the accused persons have robbed of the aforesaid amount from the O.P. No. 2 at the threat of his life. The allegation against the petitioners is that they were carrying a pistol which was put into the mouth of the O.P. No.2 and threatened him to part with the said amount of Rs.5,30,000/-. Upon receiving such threat of death the O.P. No. 2 gave the aforesaid amount to the accused persons. Then accused No. 2 was thrown out of the vehicle and before that the petitioner i.e. accused No. 5 took out the golden chain from the neck of the O.P. No.2. Thereafter, on aforesaid allegations a complaint case no. 688/2023 dated 07.06.2022 was lodged against all the accused persons, which is converted in to F.I.R. by the order of the Ld. Court and later an F.I.R. bearing Bhagwanpur (Belav) P.S. Case No. 192 of 2022 dated 06.09.2022 registered against all accused persons for the offence under sections 420/120B/379/384/387/323/504 & 506/34 of IPC.

4. It is submitted by learned counsel appearing for petitioners that petitioner no. 3, namely, Prinyanka Kumari @ Kumari Priyanka, the wife of Rabindra Kumar Pandey, who is the cousin of the informant/complainant Upendra Pandey, who is also



an accused of complaint case no. 1016 of 2022 as lodged by petitioner no. 3. It is submitted that petitioner no. 1, is the father and petitioner no. 2 is the mother of petitioner no. 3. In this context, it is further submitted that to create pressure as to compromise aforesaid matrimonial case in retaliation one FIR was lodged initially, which was registered as Bhagwanpur P.S. Case No. 192/22, where police after investigation exonerated petitioners as same was found false, whereafter, on protest, learned trial court took cognizance against petitioners for offences punishable under Sections 341, 323 and 386 of the Indian Penal Code.

5. It is further submitted by learned counsel that the present prosecution is a classical example of malicious prosecution that how to settle the personal vengeance, the petitioners were implicated with false case as to settle the matrimonial disputes by creating extra legal pressure. It is submitted that this case is covered under the golden diagonals of ***State of Haryana and Ors. Vs. Bhajan Lal and Ors.,*** reported in ***1992 Supp (1) Supreme Court Cases 335.***

6. Learned counsel appearing on behalf of the opposite party no. 2 submitted that upon protest, learned Judicial Magistrate took cognizance against petitioners but he could not disputed the facts and litigating background and also the



submission of final where police found the case as untrue, as raised by the learned counsel appearing for petitioners.

7. It would be apposite to re-produce para 102 of the ***State of Haryana and Ors. Vs. Bhajan Lal and Ors.***, 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.”

8. From the perusal of record and also taking note of the arguments as canvassed by learned counsel appearing for the parties, it appears that the parties are in litigating terms, where before lodging the FIR, the informant was made accused by petitioner no. 3 in matrimonial complaint case as discussed aforesaid, whereafter, the informant lodged a police case against petitioners i.e. Bhagwanpur (Belav) P.S. Case No. 192 of 2022, where after investigation, police submitted final form exonerating petitioners through charge-sheet no. 81/22 dated 19.12.2022, whereafter considering the protest petition, the cognizance as aforesaid was taken against petitioners.



9. In the background of aforesaid, it can be safely arrived on the conclusion *prima facie* that the present criminal case was registered out of oblique and ulterior motive against petitioner and, therefore, same is covered under the guideline no. 7 of ***Bhajan Lal’ case (supra)***, accordingly, impugned order of cognizance dated 30.10.2023 passed by the Ld. Additional Chief Judicial Magistrate-V, Kaimur at Bhabhua is hereby set aside and quashed *qua* petitioners with all its consequential proceedings to secure ends of justice.

10. Let copy of this judgment be sent to the trial court, without delay.

(Chandra Shekhar Jha, J)

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AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	11.04.2025
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