

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.40963 of 2022

Arising Out of PS. Case No.-283 Year-2013 Thana- EAST CHAMPARAN COMPLAINT
District- East Champaran

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Birendra Kumar @ Birendra Singh Son of Late Yadunandan Singh Resident
of Village - Korawan, P.S.- Naubatpur, District- Patna (Bihar)

... .. Petitioner/s

Versus

1. The State of Bihar
2. Sudama Ram Son of Late Sukham Ram Resident of Village - Maguraha,
P.S.- Govindganj, District- East Champaran (Bihar)

... .. Opposite Party/s

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Appearance :

For the Petitioner/s : Ms. Leelawati Kumari, Adv

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

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CORAM: HONOURABLE MR. JUSTICE CHANDRA SHEKHAR JHA
ORAL JUDGMENT

Date : 25-02-2025

1. 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 09.12.2019 passed by
learned Additional Sessions Judge-I-cum Spl. Judge SC/ST
Act, East Champaran, Motihari in Cr. Rev. No. 105 of 2014
and also against order dated 28.04.2014 as passed by
learned ACJM-XIV, Motihari arising out of Complaint Case No.
283 (C) of 2013 in which learned ACJM-XIV, Motihari took
cognizance for the offences punishable under Section 304 of



the Indian Penal Code & Section 3(i)(x) of the SC/ST Act.

3. The brief facts of the case is that the complainant Sada Ram filed complaint petition vide C-283/13 against the petitioner and one another alleging therein that his son Pramod Ram had gone in a marriage party on 04.12.2013 and while returning at about 10:00 PM he was hit by a Bolero Jeep bearing registration no. BR 05 P 3481, due to which he got injured and fell down on the road. On getting information by one Deepak Kumar of village Majurahan, the complainant along with his family members arrived at the spot by Tata Magic and found Pramod Ram injured laying in a ditch beside the road. In the meantime, accused persons along with some other unknown police man also arrived there, when the complainant and other persons told them to give proper medical assistance to injured Pramod Ram, they did not do so rather they forcibly lifted injured and threw him in another pick-up van, due to which injured Pramod Ram again sustained serious injury. Therefore, they forcibly declared Pramod Ram dead and sent his dead body to Sadar Hospital, Motihari for post mortem. At that time when complainant, his



wife and Mukesh Ram protested, the accused persons called by caste name of the complainant, his family members and abused them and threatened to beat them by stick, they also took thumb impression of complainant on plain paper forcibly and threatened him if he does anything wrong he would be assaulted. It has been further alleged that when the said matter of police atrocities floated in the locality then the villagers and nearby people assembled there and blocked the road, when police did not take any action then complainant filed this complaint petition.

4. It is submitted by learned counsel that O.P. No. 2/complainant Sudama Ram was also the informant of Harsidhi P.S. Case No. 40 of 2013, where his son died in a road accident. It is submitted that as per said FIR son of informant/O.P. No. 2 died on spot. It is pointed that protesting against said road accident, road was jammed and for said occurrence police lodged a case against complaint/O.P. No. 2 as Harsidhi P.S. Case No. 41 of 2013. It is submitted that after passing of three days, complainant lodged a complaint case which has been registered as



Complaint Case No. 283 (C) of 2013, wherein it was alleged that petitioner alongwith other co-accused persons, who were police officials namely Ram Prasad Singh, send his injured son for post mortem instead of sending him to hospital for treatment and, therefore, they committed murder of his son.

5. In this context, it is further pointed out by learned counsel that the cognizance order *qua* co-accused Ram Pramod Singh, has already quashed by this Court through Cr. Misc. No. 31687 of 2014 dated 01.03.2019 (annexure no. 7). It is submitted that case of petitioner is fully covered by aforesaid judgment, being similarly situated co-accused person.

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 appearing on behalf of State, while opposing the application submitted that though the cognizance taken by the Court below is on the basis of the materials before it, however it transpires that three criminal cases were lodged related with same incident. It is also conceded that present criminal case appears to be lodged subsequently.

8. In view of aforesaid factual and legal discussions, it appears to this Court that the present prosecution was lodged against the petitioner, who is a police



official and was on duty, with *mala fide*/oblique motive, which is completely untenable and appears solely intended to harass him. Case of petitioner demands discipline of judicial parity *qua* co-accused Ram Pramod Singh, which was quashed through Cr. Misc. No. 31687 of 2014 dated 01.03.2019, as discussed above. Accordingly, by taking note of guidelines as mentioned in para nos. 5, 6 and 7 of **Bhajan Lal Case (supra)**, impugned order of cognizance dated 09.12.2019, with all its consequential proceedings, *qua*, petitioner arising thereof as passed in Complaint Case No. 283 C of 2013, pending before learned ACJM-XIV, Motihari is hereby quashed and set aside.

9. Hence, this application stands allowed.

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

(Chandra Shekhar Jha, J.)

S.Tripathi/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	28.02.2025
Transmission Date	28.02.2025

