

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.21112 of 2022

Arising Out of PS. Case No.-691 Year-2019 Thana- PATNA COMPLAINT CASE District-
Patna

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1. KAMAL KISHORE @ NOKHAN Son of Jai Prakash Singh Resident of Village - Manjhouli, P.S.- Salempur, Distt - Patna.
 2. Randhir Kumar Son of Late Bindeshwari Singh Resident of Village - Manjhouli, P.S.- Salempur, Distt - Patna.
 3. Vikash Kumar @ Vishal Kumar Son of Rajmani Singh Resident of Village - Manjhouli, P.S.- Salempur, Distt - Patna.
 4. Pawan Kumar Son of Yogendra Prasad @ Anand Kumar Resident of Village - Manjhouli, P.S.- Salempur, Distt - Patna.
 5. Anand Mohan Son of Yogendra Prasad Resident of Village - Manjhouli, P.S.- Salempur, Distt - Patna.
 6. Brajesh Kumar Son of Janardhan Singh Resident of Village - Manjhouli, P.S.- Salempur, Distt - Patna.
 7. Chandan Kumar @ Chundan Kumar Son of Awadhesh Prasad Resident of Village - Manjhouli, P.S.- Salempur, Distt - Patna.
 8. Virash Kumar @ Virap Kumar Son of Rajmani Singh Resident of Village - Manjhouli, P.S.- Salempur, Distt - Patna.
 9. Jaybind Kumar Son of Devendra Singh Resident of Village - Manjhouli, P.S.- Salempur, Distt - Patna.
 10. Subodh Kumar Son of Devendra Singh Resident of Village - Manjhouli, P.S.- Salempur, Distt - Patna.

... .. Petitioner/s

Versus

1. The State of Bihar
2. Sanjay Prasad Son of Late Rameshwar Singh Resident of Village - Manjhouli, P.S.- Salimpur, Distt - Patna.

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr. Angad Kunwar, Advocate
For the State	:	Mr. Jharkhandi Upadhyay, APP
For the O.P. No.2	:	Mr. Manoj Kumar Pandey, Advocate
	:	Ms. Kumari Pallavi, Advocate

CORAM: HONOURABLE MR. JUSTICE SANDEEP KUMAR
ORAL ORDER

3 26-06-2025 Heard learned counsel for the petitioners, learned
counsel for the State and learned counsel for the opposite party



no.2.

2. This application has been filed for quashing the order of summoning dated 07.01.2020 & cognizance and issuance of process dated 17.01.2020 passed in complaint case no. 691 (c) of 2019 by the Learned Court of Judicial Magistrate, 1st Class, Barh whereby and whereunder the petitioners have been summoned for the offence punishable under section 323, 341,379,427,504 Indian Penal Code against the 02 accused persons in vague and order to issue process against the petitioners.

3. The prosecution case, in brief, is that the accused persons were co-villagers of the complainant and on the date of occurrence, all the accused persons armed with *lathi danda*, entered into the complainant's house and starting abusing him. When the complainant protested against the same, accused persons gave him lathi blow and they also assaulted the brother of complainant namely Mukesh Kumar. In the meanwhile, accused no. 3 namely Vikash Kr. @ Vishal Kumar took away gold ornament amounting to Rs.16,000/- and accused no. 2 Jaibind Kumar snatched gold chain amounting to Rs. 31,000/- from the brother of complainant and other accused persons entered the house of the complainant and damaged articles



which were kept in the house causing a loss of Rs. 20,000/- to the complainant.

4. Learned counsel for the petitioners submits that after filing the complaint case, the complainant was examined on S.A. and thereafter, three witnesses were produced on behalf of the complainant who were examined by the learned Magistrate. The learned Magistrate issued summons vide order dated 07.01.2020 and took cognizance recording that a *prima facie* case is made out against two accused persons but the name of two accused persons against whom *prima facie* case has been found to be true, has not been disclosed.

5. Learned counsel for the petitioner further submits that the learned Court below, primarily in the order dated 07.01.2020, has recorded that *prima facie* case is made out against two accused persons only but later, in the order dated 17.01.2020, the learned Court below passed an order that *prima facie* case is made out against all the accused persons. He further submits that the learned Court below, despite finding *prima facie* case against all the accused persons, issued summons only against five persons only vide order dated 28.01.2020 and therefore all the orders i.e. order dated 07.01.2020, order dated 17.01.2020 as well as order dated



28.01.2020 are recorded without application of judicial mind in a mechanical manner.

6. Learned counsel for the petitioners further submits that the complainant filed a rectification petition before the learned Magistrate on 17.01.2020 for rectifying and making correction in the order dated 07.01.2020 and the learned Court below, on perusal of record, has taken taken cognizance against all accused persons and rectified the order dated 07.01.2020 as “*ten accused persons be read in place of two accused persons*”, which itself is not permissible as the learned Court below has no jurisdiction to recall, modify or rectify its own order.

7. Learned counsel for the petitioners further submits that the petitioners are innocent and have been falsely implicated in the present complaint case because of the family dispute between the parties just to wreak vengeance upon the petitioners.

8. Learned counsel for the petitioners further submits that the petitioner no. 3 has also filed a case bearing Salimpur P.S. Case No. 179/19 dated 03.09.2019 against the complainant and other persons and the present case is a counter blast to the same case. He further submits that the complainant and his family members have criminal antecedent also which



are as follows:-

- (i) Salimpur P.S. Case No. 187/2018.
- (ii) Salimpur P.S. Case No. 205/18.

9. Learned counsel for the State as well as learned counsel for the opposite party no.2 have opposed the application and have submitted that the learned Magistrate has initially taken cognizance of the offence rightly vide order dated 07.01.2020 and subsequently, made necessary corrections on 17.01.2020.

10. I have heard the submissions of the parties and have also perused the materials available on record.

11. The second order i.e. order dated 17.01.2020, in my opinion, is illegal as a criminal Court cannot review its earlier order. So far as the order taking cognizance dated 07.01.2020 is concerned, it appears that the present complaint has been filed malafidely by the complainant as a counter blast to Salimpur P.S. Case No. 179 of 2019 which has been filed earlier and therefore this kind of malafide prosecution cannot be allowed to continue.

12. The Hon'ble Supreme Court in the case of ***State of Haryana & Ors. Versus Bhajan Lal & Ors. reported in 1992 Supp (1) SCC 335***, has enumerated the categories under



which the quashing application may be allowed. It will be relevant to quote paragraph no.102 of the aforesaid decision which reads as under:

“102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter 14 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 channelized and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such a power should be exercised.

(1) Where the allegations made in the first information report or the complaint, even if they are taken at the 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 information report and other materials, if any, accompanying the F.I.R. 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 person 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.”

13. In view of the law laid down in the case of ***State of Haryana & Ors. Versus Bhajan Lal & Ors. (Supra)***, this application is allowed.

14. Accordingly, the summoning order dated 07.01.2020 and cognizance and issuance of process order dated 17.01.2020 passed by the by the learned Judicial Magistrate 1st Class, Barh, in connection with Complaint Case No. 691(C)/2019 are hereby quashed.

(Sandeep Kumar, J)

Anand/-

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