

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.2183 of 2024

Arising Out of PS. Case No.-1105 Year-2020 Thana- BHAGALPUR COMPLAINT CASE
District- Bhagalpur

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Md. Gulzar S/O Late Md. Jahir R/O Village- Mistri Tola, Hussainabad, P.S-
Babarganj, Distt.- Bhagalpur.

... .. Petitioner

Versus

1. The State of Bihar
2. Bibi Rubi W/O Md. Gulzar R/O Gudaiya, Kabirpur, P.S- Lalmatiya, P.O-
Nathnagar, Distt.- Bhagalpur.
3. Md. Faiyaz S/O Md. Babar @ Changi R/O Hussainabad Mistri Tola, P.S-
Babarganj, Distt.- Bhagalpur.

... .. Opposite Party

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Appearance :

For the Petitioner/s	:	Ms.Shweta, Advocate
		Mr.Md.Najmul Hodda, Advocate
For the Opposite Party/s :		Mr.Shantanu Kumar, APP

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CORAM: HONOURABLE MR. JUSTICE CHANDRA SHEKHAR JHA
ORAL JUDGMENT

Date : 20-01-2025

Heard Ms. Shweta, learned counsel for the petitioner
and learned A.P.P. for the State.

2. The present application has been filed for quashing
the order dated 15th July, 2023 passed by learned Sessions
Judge, Bhagalpur in connection with Criminal Revision No.
28/2023, whereby learned Sessions Judge has been pleased
to dismiss the criminal revision by confirming the order dated
17.11.2022 in Complaint Case No. 1105 of 2022, passed by
learned Judicial Magistrate - 1st Class, Bhagalpur, which was



dismissed under section 203 of the Code of Criminal Procedure (in short the 'Cr.P.C.').

3. The brief facts of the case is that complainant/revisionist namely, Md. Gulzar had purchased a piece of land at Nathnager in the joint name of himself and his wife namely, Bibi Rubi/O.P. No. 2, but after sometime O.P. No. 2 started making pressure on the complainant to get his share of property registered in her name on his expense and, when he refused to do so, then O.P. No. 2 made a complaint before the local police against the complainant. The complainant further alleged that his wife/O.P. No. 2 left his house without informing him and also taken away Rs. 1,35,000/-. The complainant further alleged that O.P. No. 2 is currently living with O.P. No. 3 namely, Md. Faiyaz and, on 20.09.2020, both the opposite parties came at his house and taken away their cloths and jewelries and when he and his children tried to stop them, both the opposite parties abused and threatened them.

4. Learned counsel appearing on behalf of the petitioner/complainant submitted that from perusal of the



order as passed in Complaint Case No. 1105/2020 dated 17.11.2022 by learned Judicial Magistrate - 1st Class, Bhagalpur, it appears that learned court did not find sufficient ground for initiating criminal proceeding against opposite parties and dismissed the aforesaid complaint petition.

5. It is submitted by learned counsel that in the instant case, petitioner/complainant was examined on S.A., where he produced three inquiry witnesses in support of his case, but learned court below ignored the evidences available on record and dismissed the complaint petition.

6. Learned A.P.P. for the State, while opposing the quashing petition, submitted that there is no infirmity in the impugned order and learned court has rightly passed the impugned order.

7. In this context, learned A.P.P. has relied upon the legal report of Hon'ble Supreme Court as available through **Debendra Nath Bhattacharjee & Ors. Vs. State of W.B. & Anr.** reported in **AIR 1972 SC 1607 = (1972) 3 SCC 414** and **Pepsi Food Ltd. and Anr. Vs. Special Judicial Magistrate and Ors.** reported in **(1998) 5 SCC 749**.



8. It would be apposite to reproduce **para 7 & 8** of **Debendra Nath Bhattacharjee's** case (supra), which reads as under:

"7. It has to be remembered that an order of dismissal of a complaint under Section 203 of the Criminal Procedure Code has to be made on judicially sound grounds. It can only be made where the reasons given disclose that the proceedings cannot terminate successfully in a conviction. It is true that the Magistrate is not debarred, at this stage, from going into the merits of the evidence produced by the complainant. But, the object of such consideration of the merits of the case, at this stage, could only be to determine whether there are sufficient grounds for proceeding further or not. The mere existence of some grounds which would be material in deciding whether the accused should be convicted or acquitted does not generally indicate that the case must necessarily fail. On the other hand, such grounds may indicate the need for proceeding further in order to discover the truth after a full and proper investigation. If, however, a bare perusal of a complaint or the evidence led in support of it show that essential ingredients of the offences alleged are absent or that the dispute is only of a civil nature or that there are such patent absurdities in evidence produced that it would be a waste of time to proceed further, the complaint could be properly dismissed under Section 203 of the Criminal Procedure Code.

8. In the case before us, the learned Magistrate was in error in assuming that merely because the names of one or two former employees of the Company may be mentioned in the pay sheets the whole prosecution case was actually demolished. Moreover, as the High Court had rightly pointed out, the complainant's actual evidence had fully supported and not contradicted any part of the complaint. No such absurdity was revealed by the complainant's evidence as to merit a forthright dismissal of the complaint under Section 203 of the Criminal Procedure Code. What the Magistrate had to determine at the stage of issue of process was not the correctness or the probability or improbability of individual items of evidence on disputable grounds, but the existence or



otherwise of a prima facie case on the assumption that what was stated could be true unless the prosecution allegations were so fantastic that they could not reasonably be held to be true.”

9. It would further be apposite to reproduce **para 28** of **Pepsi Food Ltd.’s** case (supra) the judgment of Hon’ble Supreme Court as available through

“28. Summoning of an accused in a criminal case is a serious matter. Criminal law cannot be set into motion as a matter of course. It is not that the complainant has to bring only two witnesses to support his allegations in the complaint to have the criminal law set into motion. The order of the Magistrate summoning the accused must reflect that he has applied his mind to the facts of the case and the law applicable thereto. He has to examine the nature of allegations made in the complaint and the evidence both oral and documentary in support thereof and would that be sufficient for the complainant to succeed in bringing charge home to the accused. It is not that the Magistrate is a silent spectator at the time of recording of preliminary evidence before summoning of the accused. The Magistrate has to carefully scrutinise the evidence brought on record and may even himself put questions to the complainant and his witnesses to elicit answers to find out the truthfulness of the allegations or otherwise and then examine if any offence is prima facie committed by all or any of the accused.”

10. Having Heard learned counsel for the parties and after going through the materials available on record, it appears that opposite party no. 2 is admittedly the wife of complainant/petitioner, who is major and voluntarily living with defendant. The impugned order suggests that no



evidence was brought on record *qua* second marriage of O.P. No. 2, hence the observation of learned jurisdictional Magistrate that the present complaint case was filed to impart pressure on O.P. No. 2 as to get advantage in the case filed by O.P. No. 2 against him appears convincing. On aforesaid background, malicious prosecution with ulterior and oblique motive cannot be denied. Accordingly, by taking note of **Pepsi Food Ltd.’s** case (supra), this Court did not find any ground to interfere with the impugned order.

- 11. The present quashing petition stands dismissed.
- 12. Let a copy of this judgment be sent to the learned court concerned forthwith.

(Chandra Shekhar Jha, J)

Rajeev/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	04.02.2025
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