

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.72323 of 2023

Arising Out of PS. Case No.-517 Year-2023 Thana- PATNA COMPLAINT CASE District-
Patna

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1. Rajesh Kant S/O Late Ravi Kant Prasad R/O Mohalla- Chak Hussain, Ward No. 08, P.O. And P.S. Khusrupur, District- Patna.
 2. Prince Kant S/O Late Ravi Kant Prasad R/O Mohalla- Chak Hussain, Ward No. 08, P.O. And P.S. Khusrupur, District- Patna.
 3. Piyush Kant Son Of Late Ravi Kant Prasad R/O Mohalla- Chak Hussain, Ward No. 08, P.O. And P.S. Khusrupur, District- Patna.
 4. Ranjan Kant S/O Late Ravi Kant Prasad R/O Mohalla- Chak Hussain, Ward No. 08, P.O. And P.S. Khusrupur, District- Patna.
 5. Aryan Dev Kant Son Of Keshav Kant R/O Mohalla- Chak Hussain, Ward No. 08, P.O. And P.S. Khusrupur, District- Patna.

... .. Petitioner/s

Versus

1. The State of Bihar
2. Dinesh Kumar @ Dinesh Ram Son Of Sri Mahendra Prasad R/O Mohalla- Chak Hussain, Ward No. 8, P.S. Khusrupur, District- Patna

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr. Onkar Nath, Advocate
For the State	:	Mr. Satyendra Prasad, APP
For O.P. No. 2	:	Mr. Athar Ali, Advocate

CORAM: HONOURABLE JUSTICE SMT. SONI SHRIVASTAVA
ORAL JUDGMENT

Date : 13-07-2026

Heard learned counsel for the petitioners, learned
counsel for the State and learned counsel for the opposite party
no. 2.

2. Present application has been filed for quashing the
order dated 11.09.2023 passed in Complaint Case No. 517 of
2023 by the learned Judicial Magistrate-1st Class, Patna City
whereby cognizance has been taken under Sections 341, 323,
504 & 34 of the Indian Penal Code.

3. On specific query, it has been pointed out that after



the order taking cognizance, there has been no progress in the case and till date, the charges have not been framed. The present case arises out of a complaint filed by the opposite party no. 2 wherein all these petitioners, who are in the age bracket of 19-26 years have been made an accused with the allegation that the opposite party no. 2 on 26.04.2023 at around 7:30 p.m. was surrounded by these petitioners who indulged in hurling abuses and assault by means of fists and slaps. Further, allegation has been made that a purse containing Rs. 7,000/- and a watch was also snatched away.

4. Learned counsel for the petitioners submits, at the outset, that the present case is a glaring example of malicious prosecution, inasmuch as the present complaint case is a counter blast and a fall out of Khushrupur P.S. Case No. 152 of 2023 lodged by petitioner no. 1 with the allegation that he was assaulted by Chotu Kumar @ Suraj, who is the son of the present complainant (opposite party no. 2) along with another person, on his head causing serious injury to him. The aforesaid First Information Report was promptly lodged by the petitioner no. 1 on 26.04.2023, i.e. on the date of occurrence itself at Khushrupur police station and having knowledge of the said fact, he resorted to filing the present complaint against the



petitioners including the petitioner no. 1, in retaliation. Moreover, the opposite party no. 2 filed the present complaint after undue delay on 29.04.2023 which is clearly indicative of the fact that the same was done after due thought and deliberation.

5. Learned counsel appearing on behalf of the opposite party no. 2 has however, contended that although there has been some delay in lodging the complaint but the same can be explained, as on account of the fact that some negotiations were going on between the parties for settlement of the dispute, but the filing of the FIR by the petitioners necessitated the filing of the present complaint.

6. After having heard the rival contentions and having gone through the complaint, the statement of complaint on SA and the statement of the inquiry witnesses, this Court finds that a vague and general allegation of some altercation and hurling of abuses has been made in the complaint and the complainant as well as the other witnesses, upon query of the Court have stated that a day prior to the occurrence, the petitioners were creating some nuisance in the lane under the influence of liquor. The inquiry witnesses have also confirmed the fact that the petitioners and the opposite party no. 2 are neighbours residing



in the same locality and had no ill will from before. They have also specifically stated that the incident only entailed some assault by means of slaps (लप्पड़ थप्पड़.).

7. This Court has also gone through the First Information Report which has been brought on record by way of Annexure-3 to the present application and has found that the same was lodged on the date of the occurrence itself and it appears that only with a view to counter the said case, the present complaint has been filed by the opposite party no. 2. It is true that merely the plea of a case being a counter blast of another case would not be sufficient for quashing of prosecution. But in the case at hand, upon reading of the present complaint and the other supportive material on record in the backdrop of the FIR lodged by petitioner no. 1, coupled with the fact that no injury whatsoever has been suffered or pointed out on the side of the complainant or his witnesses, it clearly emerges that the present complaint has been lodged with malicious intent and the same smacks of malafide. Some allegations of snatching of cash and watch has also been imputed which appears to be purely ornamental.

8. Taking into account the entire facts and circumstances and considering the case in its entirety, it appears



that the present case has been filed only with a view to counter the earlier case filed on behalf of the petitioners and the allegations made in the complaint, as also in the statement of the witnesses, do not make out any case under Sections 341, 323 or 504 of the IPC as neither a case of wrongful restraint nor any hurt is shown to have been caused in the entire incident. One cannot lose sight of the fact that issuance of summons in a criminal prosecution is a serious matter and the same should not be resorted to in a causal manner, without application of judicial mind.

9. At this stage, this Court finds it prudent to refer to clauses 1 and 7 of the categories of cases as provided in the case of **State of Haryana & Ors. Vs. Bhajan Lal & Ors** reported in **1992 Supp (1) Supreme Court Cases 335** wherein extraordinary powers under Article 226 or the inherent powers under Section 482 Cr.P.C. could be exercised to prevent abuse of process of court or otherwise to secure ends of justice. The relevant portion of paragraph 102 of **Bhajan Lal** (supra) is being quoted as hereunder:

"102.

(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)



- (3)
- (4)
- (5)
- (6)

(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.”*

10. In view of the settled legal position and considering the factual context of the present case, this Court finds the present case to be one of malicious prosecution and is thus of the considered view that the order taking cognizance of the offences and issuance of summons dated 11.09.2023 warrants interference.

11. As such, the order dated 11.09.2023 passed in Complaint Case No. 517 of 2023 by the learned Judicial Magistrate-1st Class, Patna City is quashed and the present application stands allowed.

(Soni Shrivastava, J)

devendra/-

AFR/NAFR	NAFR
CAV DATE	N/A
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