

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**CRIMINAL MISCELLANEOUS No.89090 of 2024**

Arising Out of PS. Case No.-8593 Year-2023 Thana- PATNA COMPLAINT CASE District-  
Patna

- =====
1. Jay Prakash Sharma, S/o Late Prem Chandra Sharma, R/o Quarter No. 03, Ground Floor, Type-IV, NIT Patna Campus, P.O. and P.S. - Pirbahore, District - Patna.
  2. Osho, S/o Jay Prakash Sharma, R/o Quarter No. 03, Ground Floor, Type-IV, NIT Patna Campus, P.O. and P.S. - Pirbahore, District - Patna. A/P Working as Software Engineer in Centelon at Bangluru.
  3. Binod Kumar Chaubey, S/o Late Haribansh Chaubey, R/o New Mainpura, P.O. and P.S. - Danapur, District - Patna.

... .. Petitioner/s

Versus

1. The State of Bihar.
2. Ambika Rai, Son of Late Ram Baran Rai, R/o Village- Ganjpur, P.O. and P.S. - Athmangola, District – Patna, at present residing at National Institute of Technology Patna Campus, P.S. - Pirbahore, District - Patna.

... .. Opposite Party/s

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**Appearance :**

|                      |   |                                                                                     |
|----------------------|---|-------------------------------------------------------------------------------------|
| For the Petitioner/s | : | Mr. Y.V. Giri, Sr. Adv.<br>Mr. Sanjay Kumar Giri, Adv.<br>Mr. Mritunjay Harsh, Adv. |
| For the O.P. No.     | : | Mr. Gopal Govind Mishra, Adv.                                                       |
| For the State        | : | Mr. Ram Priya Sharan Singh, APP                                                     |

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**CORAM: HONOURABLE MR. JUSTICE SOURENDRA PANDEY**

**C.A.V. JUDGMENT**

**Date : 12-02-2026**

Heard Mr. Y.V. Giri, the learned Senior Advocate,



assisted by Mr. Sanjay Kumar Giri and Mritunjay Harsh, the learned Advocates for the petitioners and Mr. Gopal Govind Mishra, the learned counsel for the complainant/opposite party No. 2. The State has been represented by Mr. Ram Priya Sharan Singh, the learned Addl. Public Prosecutor.

2. This is an application seeking quashing of the order dated 05.04.2024 passed by the Court of learned Additional Chief Judicial Magistrate-X, Patna in connection with Complaint Case No. 8593 (C) of 2023, whereby cognizance has been taken against the petitioners for the offences under Sections 323, 341, 379 and 34 of the Indian Penal Code (*hereinafter referred to as the I.P.C.*) as also seeking quashing of all consequent proceedings initiated pursuant thereto.

3. The facts giving rise to the present application is to the effect that one complaint was filed alleging therein that the complainant/opposite party No. 2 was an ex-serviceman and working as a Security Guard at National Institute of Technology, Patna (*hereinafter referred to as the N.I.T., Patna*) under petitioner No. 1, namely, Jay Prakash Sharma. It has been alleged that the petitioner No. 1 used to take domestic help from the complainant/opposite party No. 2 and has cut down a



*Sheesham* tree within the campus of N.I.T., Patna and when the complainant/opposite party No. 2 refused to help him, the petitioner No. 1 got aggrieved and started playing mischief in the attendance register and also threatened him to deposit one month salary with him if he wants to continue in job. It has further been alleged that the petitioner No. 1 had earlier got ousted three Supervisors and three Security Guards from their jobs. It has next been alleged that on 05.09.2023, while the complainant/opposite party No. 2 was going to his village with Rs. 60,000/- in cash, the accused persons along with other unknown persons snatched away the said cash and also the gold chain and threatened him of dire consequences.

4. On such complaint made by the complainant/opposite party No. 2, the learned Additional Chief Judicial Magistrate-X, Patna took cognizance of the offences under Sections 323, 341, 379 and 34 of the I.P.C. against the petitioners *vide* order dated 05.04.2024.

5. Being aggrieved by the impugned order taking cognizance, Mr. Y.V. Giri, the learned Senior Advocate appearing on behalf of the petitioners, submits that the petitioner No. 1 is working as Assistant Registrar (General Administration)-Cum-Security Incharge at N.I.T., Patna and he



also happens to be an ex-serviceman. It has been submitted that the petitioner No. 2, namely, Osho, is the son of petitioner No. 1 and he is a Software Engineer and has completed his B.Tech Degree from I.I.T., Dhanbad and is presently working in a Multinational Company at Bengaluru, whereas the petitioner No. 3, namely, Binod Kumar Chaubey, is working as Security Guard at N.I.T., Patna and only because the complainant/opposite party No. 2 thought that he was helping the petitioner No. 1, he was made accused in the present case, although the allegations leveled in the complaint petition are general and omnibus in nature and nothing specific has been alleged against him.

6. Mr. Y.V. Giri, the learned Senior Advocate submits that the present case is a fit example of malicious prosecution as just prior to the filing of the present complaint, it was petitioner No. 1, who had lodged an F.I.R. against the complainant/opposite party No. 2 and others on 04.09.2023, being Pirbahore P.S. Case No. 646 of 2023, for the offences under Sections 385 and 34 of the I.P.C. It has been submitted that the petitioner No. 1 in the said F.I.R. had made a complaint that the complainant/opposite party No. 2 and other four Security Guards, who were working at N.I.T., Patna, had been



threatening him and his family members of dire consequences and he had stated about his apprehension that he might be abducted and the said Security Guards also use to call outsiders in the Campus. It has also been submitted that when the petitioner No. 1 objected to the same, he was threatened.

7. It has further been submitted that prior to the institution of the said F.I.R. lodged by the petitioner No. 1, the Registrar of the N.I.T., Patna had also requested the Senior Superintendent of Police, Patna for deployment of police personnel in the Campus for the purpose of restructuring of the position of the Security Guards working on contract basis. The Registrar had raised a suspicion that the Security Guards would indulge in unruly behaviour and may create law and order situation inside the Campus, if their contracts will not be renewed. It has been submitted that it was on account of their bad performance and behaviour that the complainant/opposite party No. 2 and others were removed from the post of Security Guard at N.I.T., Patna on 04.09.2023 and their removal was through a Committee of N.I.T., Patna on the ground of their non-performance appraisal, however the complainant/opposite party No. 2 was under an impression that it was the petitioner No. 1, who, being the Security Incharge of N.I.T., Patna, was



instrumental in getting the complainant/opposite party No. 2 and others removed from their jobs.

8. It has further been submitted on behalf of the petitioners that one of the complaint witnesses, namely, Braj Bihari Saw along with one Kaushal Shah had instituted a complaint before the Deputy Chief Labour Commissioner, Ministry of Labour and Employment at Maurya Lok, Patna against the Management of N.I.T., Patna for their enhancement of salary and regularization of service; although they were working on contract basis and notice for the same was sent to the Institute on 28.06.2023 for participation in negotiation by the Management of the N.I.T., Patna on the complaint made by the Security Guards.

9. It has, thus, been submitted that because of the serious prejudice and grudge against the petitioner No. 1, being the Security Incharge of N.I.T., Patna, the complainant/opposite party No. 2 had the impression that it was petitioner No. 1 who got him removed from the job by instigating the Director of the Institute and, therefore, as a revenge and in retaliation to his removal, that the present complaint was filed. It has been submitted that the implication of petitioner Nos. 2 and 3 are so absurd that the petitioner No. 2, who is the son of petitioner No.



1, was not even present at the alleged date of occurrence and was, in fact, in Bengaluru working as a Software Engineer in a Multinational Company, whereas the petitioner No. 3 happens to be a Security Guard himself and he has no role to play in the removal of the complainant/opposite party No. 2 and others and has only been implicated because he was very close to petitioner No. 1.

10. Mr. Y.V. Giri, the learned Senior Advocate appearing for the petitioners, has, thus, submitted that the present case is an example of malicious prosecution and in view of the settled law as decided in the case of *State of Haryana and Ors. Vs. Ch. Bhajan Lal and Ors., reported in AIR 1992 SC 604*, the continuation of the criminal proceeding against the petitioners would amount to abuse of process of law, which apparently is a vexatious and retaliatory action by the complainant/informant with false and concocted story.

11. Mr. Gopal Govind Mishra, the learned counsel appearing for the complainant/opposite party No. 2, submits that there is enough evidence on record for taking cognizance against the petitioners. It has been submitted that the complainant/opposite party No. 2 has supported his averments made in the complaint petition on solemn affirmation and even



the enquiry witnesses examined by the Court have supported the case of the prosecution. It has further been submitted that for taking cognizance of an offence, the Magistrate has to be only satisfied that there is sufficient ground for proceeding against the accused persons and, therefore, there is no illegality in the order impugned through the present petition. In support of his contention, Mr. Mishra, the learned counsel for the complainant/opposite party No. 2, has placed reliance upon the judgment rendered in the case of *Jagdish Ram Vs. State of Rajasthan and Anr., reported in AIR 2004 SC 1734*.

12. It has further been submitted on behalf of the complainant/opposite party No. 2 that the law is well settled with regard to the role of the Magistrate, who applies his mind and on being satisfied that the allegation leveled against the accused constitutes an offence, passed an order and, therefore, there is no illegality in the impugned order. In support of the aforesaid submission, reliance has been placed upon the judgment in the case of *Fakhruddin Ahmad Vs. State of Uttaranchal & Anr., reported in AIR 20096 SC (Supp) 803*.

13. It has further been pointed out on behalf of the complainant/opposite party No. 2 that he has already filed a petition before the Registrar, N.I.T., Patna, stating therein the



unlawful act of petitioner No. 1 against him and others on 11.08.2023 and 16.08.2023 respectively and in retaliation to the aforesaid complaint, the aforesaid Pirbahore P.S. Case No. 646 of 2023 has been instituted. It has been submitted that the complainant/opposite party No. 2 had tried to institute an F.I.R. on 05.09.2023. However, the same was not accepted and then an application was made to the Superintendent of Police, Patna through Speed-Post, but no F.I.R. has been registered and hence, the complainant/opposite party No. 2 had to file the present complaint on 21.09.2023.

14. The attention of this Court has also been drawn by the learned counsel for the complainant/opposite party No. 2 towards some photographs, which goes on to show that the complainant/opposite party No. 2 was forced to work as labourer in the house of the petitioner No. 1 in the construction work, despite the fact that the complainant/opposite party No. 2 has retired from the post of Army Subedar from the Indian Armed Force.

15. Further, referring to the judgment rendered by the Hon'ble Supreme Court in case of *Hira Lal & Ors. Vs. State of U.P. & Ors., reported in 2009 (5) SCALE 418*, it has been submitted that the Hon'ble Supreme Court has fixed the



parameters for interference with the criminal proceedings by the High Courts in exercise of their jurisdiction under Section 482 of the Code of Criminal Procedure.

16. It has, thus, been submitted that there is no illegality in the order taking cognizance and the present application preferred by the petitioners is fit to be dismissed.

17. Having heard the parties and taking into account the respective pleadings, *i.e.*, the quashing application and the counter affidavit filed by the complainant/opposite party No. 2, it is evident that the petitioner No. 1 was working as Incharge Security Officer at N.I.T., Patna, while the complainant/opposite party No. 2 and the enquiry witnesses were the Security Personnel working in the same Institute and they were removed on 04.09.2023 by the Management of the N.I.T., Patna and immediately thereafter, the present complaint has been filed with an allegation of acts committed by the petitioners said to have been committed on 05.09.2023. It is apparent from the face of it that the present complaint has been filed by the complainant/opposite party No. 2 with the support of those Security Personnel, who stood as enquiry witnesses to such complaint, and are the persons who too were removed by the Management of the N.I.T., Patna and since the petitioner No.



1 was the Security Incharge of N.I.T., Patna, he was thought to be instrumental in their removal and, therefore, the present complaint has been lodged.

18. This Court is conscious of various judicial pronouncements including the one rendered by Hon'ble the Supreme Court in the case of ***State of Haryana and Ors. Vs. Ch. Bhajan Lal and Ors.*** (*supra*), wherein it has been observed as follows in paragraph 108, which reads as hereunder:

*“108. 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 extra-ordinary 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 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 F.I.R. 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.”*

19. From the above, it is clear that the present case falls in the category of malicious prosecution and apparently in retaliation to the removal of the complainant/opposite party No. 2 and other similar persons (who even are enquiry witnesses), the present case has been lodged against the petitioners and, therefore, continuation of the same would amount to abuse of the process of law.

20. Thus, in view of the facts afore-stated, the present application with respect to the petitioners, above-named, stands allowed and the impugned order dated 05.04.2024, referred to above, with respect to them, is set aside. Consequently, the complaint, bearing Complaint Case No. 8593 (C) of 2023, and all consequent proceedings initiated pursuant thereto with respect to the petitioners, above-named, stand



quashed.

21. Interlocutory application(s), if any, also stands  
disposed off.

(Sourendra Pandey, J)

Praveen-II/-

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