

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No. 25711 of 2013

Arising Out of Complaint Case No.-637 CYear-2011 Thana- EAST CHAMPARAN
COMPLAINT District- East Champaran

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Musafir Rai @ Mosafir Rai Son of Ram Awtar Rai Resident of Village-
Partapur, P.S.- Chiraya, District- East Champaran.

... .. Petitioner/s

Versus

1. The State of Bihar
2. Kanhiya Tiwary Son of Late Bachhu Tiwary, Resident of Village- Partapur,
P.S.- Chiraya, District- East Champaran.

... .. Opposite Party/s

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Appearance :

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| For the Petitioner/s | : | Mr. Sunil Kumar No. III, Advocate |
| For the State | : | Ms. Asha Kumari, APP |
| For the opposite party | : | Mr. Rajesh Ranjan, Advocate |

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**CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN
AMANULLAH**

ORAL JUDGMENT

Date : 25-01-2019

Heard learned counsel for the petitioner; learned A.P.P.
for the State and learned counsel for the opposite party no. 2.

2. The petitioner has moved the Court under Section
482 of the Code of Criminal Procedure, 1973 (hereinafter referred
to as the 'Code') for the following relief:

*“That this is an application for quashing
of the order dated 01.04.2013 passed by
District and Session Judge East Champaran,
Motihari in Cr. Revision No. 100 of 2012 and
the order dated 16.01.2012 passed by learned
Judicial Magistrate, Sikarahana at Motihari,
East Champaran whereby and whereunder
took cognizance against the petitioner under
section 420 and 468 of the Indian Penal Code,*



vide Trial no. 2589 of 2012 arising out of complaint case No. C 637 of 2011.”

3. The allegation against the petitioner is that after selling a piece of land in favour of the mother of the opposite party no. 2, through a registered sale deed on 28.07.1990, now the petitioner was taking the stand in the market that the land belonged to his wife and, thus, the sale deed executed in favour of the mother of the petitioner on 28.07.1990 was of no value.

4. Learned counsel for the petitioner submitted that from the plain reading of the entire complaint case, no criminal case is made out and this is classic case of misuse and abuse of the process of the Court. It was submitted that even if the allegations are accepted at their face value, mere statement by any person with regard to any stand he may take, which even though may not be either factually or legally correct, can in no way be made out to be a criminal offence until such oral statement results in some positive action. It was submitted that only if the petitioner had got some land sold/registered in the name of any third person, then only there could have been some allegation of some misconduct but till the time no fresh sale deed is executed, either by the petitioner or within his knowledge or by his active connivance and support, just because of some allegation that he is now orally taking the stand that he would get the land sold to another person



through his wife could, by no stretch of imagination be constituted as any wrong doing, much less a criminal offence.

5. Learned A.P.P. fairly submitted that there is a absolutely no criminal conduct made out from the entire reading of the complaint case.

6. Learned counsel for the opposite party no. 2 though opposed the application, however, on a direct query of the Court as to how any criminal offence was made, he could not controvert that the complaint case was absolutely hypothetical and misconceived.

7. Having considered the facts and circumstances of the case and submissions of learned counsel for the parties, the Court finds that this is one of the fittest case where the Court is required to exercise its inherent power under Section 482 of the Code. From the entire reading of the complaint no misconduct, much less any criminal offence, is made out. It is a purely imaginary and preemptive case, filed clearly with ulterior motives, which the Court deprecates in the strongest possible terms.

8. Though, in the present facts and circumstances of the case, the Court is not required to refer to any precedence but still it would be relevant to quote to the judgment of the Hon'ble Supreme Court in the case of **State of Haryana vs. Bhajan Lal**



reported as **1992 Supp (1) SCC 335**, wherein at paragraph no. 102 categories are defined where the Court should exercise its inherent power under Section 482 of the Code. The same 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 information 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 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.”

9. The Court finds that the present case comes under categories 1 and 7 of the said judgment in the case of **Bhajan Lal** (supra).

10. Further, the Hon'ble Supreme Court in the case of **Indian Oil Corpn. v. NEPC India Ltd.** reported as (2006) 6 SCC 736, at paragraph no. 13, has held thus:

“13. Any effort to settle civil disputes and claims, which do not involve any criminal offence, by applying pressure through criminal prosecution should be deprecated and discouraged.....”



11. Moreover, in the case of **State of Karnataka v. L. Muniswamy** reported as **(1977) 2 SCC 699**, at paragraph no. 7, the following has been held by the Hon'ble Supreme Court:

“7.In the exercise of this wholesome power, the High Court is entitled to quash a proceeding if it comes to the conclusion that allowing the proceeding to continue would be an abuse of the process of the Court or that the ends of justice require that the proceeding ought to be quashed. The saving of the High Court's inherent powers, both in civil and criminal matters, is designed to achieve a salutary public purpose which is that a Court proceeding ought not to be permitted to degenerate into a weapon of harassment or persecution. In a criminal case, the veiled object behind a lame prosecution, the very nature of the material on which the structure of the prosecution rests and the like would justify the High Court in quashing the proceeding in the interest of justice.....”

12. In the aforesaid background, the Court finds that the present case has been filed totally with a view of wreaking vengeance and harassing the petitioner. Thus, allowing the proceeding to continue would be clearly an abuse of the process of the Court.

13. Accordingly, the application is allowed. The entire criminal proceeding arising out of Complaint Case No. C 637 of 2011/ Trial No. 2589 of 2012, including the order dated 01.4.2013 passed by the District and Sessions Judge, East Champaran,



Motihari in Cr. Revision No. 100 of 2012 as well as the order dated 16.01.2012 passed by the Judicial Magistrate, Sikarahana at Motihari, East Champaran, by which cognizance has been taken against the petitioner under Sections 420 and 468 of the Indian Penal Code, stand quashed.

14. Before parting, the Court would observe that it deemed it appropriate to impose heavy and exemplary cost against the opposite party no. 2 for filing such a patently frivolous and false complaint case. However, due to the fair stand taken by the learned counsel representing the opposite party no. 2, the Court refrains from doing so.

15. The lower Court records be returned forthwith.

(Ahsanuddin Amanullah, J)

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