IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No. 8734 of 2016

Arising Out of Complaint Case No.-28282 (C) Year-2014 Thana- PATNA COMPLAINT CASE District- Patna

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Sabiul Haque @ Saviul Haque @ Sabih-ul-Haque, Son of Late Sakiul Haque Resident of Mohalla- Gaduhwa Tola, P.S. Sultanganj, District Patna.

... ... Petitioner/s

Versus

1. The State of Bihar
2. Aftab Alam Son of Late S. M. Siddiqui, Resident of Bandar Bagicha, Dak Bungla Chauraha Frazer Road, P.S. Kotwali, District Patna.

... ... Opposite Party/s

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Appearance :

For the Petitioner/s	:	Mr. Rana Vikram Singh, Advocate
For the Opposite Party/s	:	Mr. Aaruni Singh and Mr. Sandeep Kumar Gautam, Advocates
For the State	:	Mr. Jharkhandi Upadhyay, APP I/C and Mr. S. Dayal, APP

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CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH

ORAL JUDGMENT

Date : 12-04-2019

Heard learned counsel for the petitioner; learned APP 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 the order dated 10.8.15 passed by Smt Sangeeta Rani, the learned J.M. Ist Class, Patna in complaint case no. 28282(C)/14 whereby and where under the learned magistrate having found prima facie case under section 379,323,385 of the Indian Penal Code, issued processes against the petitioner."*

3. The allegation against the petitioner and two others in the complaint filed by the opposite party no. 2 is of entering the shop of the complainant at 9.00 P.M. on 01.05.2013 and snatching Rs. 8,000/- and a gold chain. It was alleged that even earlier co-accused had misbehaved with the wife of the opposite party no. 2, with regard to keeping goods of the petitioner in the house of the opposite party no. 2.

4. Learned counsel for the petitioner submitted that the complaint case is a counter blast to the case filed by the petitioner against the opposite party no. 2 and others alleging removal of stock of shoes worth Rs. 3-4 lakhs from the rented premises belonging to the opposite party no. 2 after breaking open the lock of the petitioner on such premises. It was submitted that the said case resulted in conviction of the opposite party no. 2 and others. It was further submitted that earlier the opposite party no. 2 had instituted Complaint Case No. 1542(C) of 2013, which being sent by the Court resulted in institution of Kotwali P.S. Case No. 271 of 2013, in which, upon investigation, the police not only gave a clean chit to the petitioner and the other co-accused but also recommended for prosecution of the opposite party no. 2 under Sections 182 and 211 of the Indian Penal Code, for lodging of false case. Learned counsel submitted that in the said case also, the

opposite party no. 2 and others have been convicted under Sections 182 and 211 of the Indian Penal Code. Learned counsel submitted that when the police had not sent up the petitioner for trial, the opposite party no. 2 had filed Protest-cum-Complaint Case No. 4518(C) of 2013. However, learned counsel submitted that despite ample opportunity being given to the opposite party no. 2 to produce his witnesses, after six months, when the same was not done, the case was dismissed on 03.06.2014. Learned counsel submitted that only thereafter, a fresh complaint case has been filed by the opposite party no. 2 on 25.07.2014, that is the present case, in which the allegations made are identical to the allegations made in Complaint Cases No. 1542 (C) of 2013 as well as 4518 (C) of 2013, both earlier filed by the opposite party no. 2. Learned counsel submitted that such filing of fresh complaint on the same and identical facts and that too, by the same person, is not permissible in law. For such proposition, learned counsel referred to the decision of the Hon'ble Supreme Court in **Surender Kaushik v. State of U.P.** reported as **(2013) 5 SCC 148**, the relevant being at paragraph no. 24.

5. Learned counsel submitted that when twice the Court below, after giving full opportunity to the opposite party no. 2 and his co-accused to adduce evidence having held them guilty, the

matter relating to the same issue, cannot be again re-agitated by the opposite party no. 2 by misusing the process of the Court. Learned counsel submitted that the reason why the opposite party no. 2 had initially lodged a *Sanha* before the police was to somehow exert pressure on the petitioner to vacate the premises which was under his tenancy pursuant to agreement made by the late mother of the opposite party no. 2. It was submitted that when the opposite party no. 2 failed in his ulterior motive, he first lodged a false *Sanha* against the petitioner and others and thereafter these complaint cases have been filed one after the other. It was submitted that the petitioner in fact is the victim, as stock of Rs. 3-4 lakhs has been stolen and taken away by the opposite party no. 2, which has till date not been returned. It was submitted that based on the same allegations, the police not having sent up the petitioner and other co-accused for trial and finding the case to be totally false and also recommending for prosecution under Sections 182 and 211 of the Indian Penal Code in which also, upon a full fledged trial, the opposite party no. 2 and others have been convicted, clearly proves that the present case is malicious with the intention of wreaking vengeance and harassing the petitioner.

6. Learned counsel for the petitioner further relied upon the decision of the Hon'ble Supreme Court in the case of **State of**

Haryana v. Bhajan Lal reported as **1992 Supp (1) SCC 335**, specifically category 7 at paragraph no. 102.

7. Learned APP submitted that the Court below has taken cognizance based on the materials available before it and after recording the statement of witnesses in support of the complaint. However, on a direct query of the Court to learned APP with regard to how the second complaint based on the same facts, that too between the same persons, was maintainable in view of the decision of Hon'ble Supreme Court in **Surender Kaushik** (*supra*), learned APP submitted that the law is in favour of the petitioner.

8. Learned counsel for the opposite party no. 2 submitted that he is a victim of the misdeeds of the petitioner and in fact, the petitioner along with others had initially misbehaved with his wife by forcibly trying to keep goods in his house for which he has filed *Sanha* before the local police but when nothing happened, he was forced to take recourse to filing of the complaint. Learned counsel submitted that the police having investigated the complaint as well as the FIR of the petitioner having not sent the petitioner for trial was wrong as the witnesses of the opposite party no. 2 were not examined by the police during investigation. It was further submitted that during the enquiry in

the present case, the witnesses examined have supported the prosecution story. With regard to the fresh complaint case having been filed, learned counsel submitted that the past sequence of events have been narrated in the complaint and, thus, there is no suppression of fact on the part of the opposite party no. 2. He further submitted that though in the earlier case, the date of occurrence was mentioned as beginning from 09.04.2013 till date, but in the present case a specific event which has occurred on 01.05.2013 has been mentioned which clearly indicates that the cause of action in the present case is different and, thus, the present case cannot be said to be based on identical facts which would clearly distinguish the first complaint. However, he submitted that due to wrong advice the present fresh complaint has been filed as there should have been application seeking restoration of Complaint Case No. 4518(C) of 2013, which had been dismissed. However, on a direct query of the Court as to how such distinction has been sought to be made when in the very first Complaint Case No. 1542(C) of 2013, which was filed on 04.05.2013, the date of the occurrence is clearly specified as from 09.07.2013 till date, any event prior to such date i.e., 04.05.2013, especially 01.05.2013, can be said not to be included in such complaint and further with regard to the fact that even if under

wrong advice something is done, how such filing of a fresh complaint could be condoned in view of the law settled by the Hon'ble Supreme Court in the case of **Surender Kaushik** (*supra*), learned counsel could not give any satisfactory reply. It was further submitted that the stage has changed since filing of the present application, inasmuch as, charges have been framed and a few witnesses have also been cross-examined.

9. Having considered the facts and circumstances of the case and submissions of learned counsel for the parties, the Court finds that a case for interference has been made out.

10. At the very outset, the sequence of facts which are admitted indicates that somehow or the other, the opposite party no. 2 is trying to pursue an issue in which he has failed, not once but twice. Moreover, he has failed to prove his case, both before the police as well as before the Court, where in two trials, first with regard to the FIR filed by the petitioner against the opposite party no. 2, which has resulted in conviction and thereafter in the initial complaint filed by the opposite party no. 2, from which the present complaint case has ultimately arisen, being referred to the police and upon investigation, the allegations having been found to be totally incorrect, upon a recommendation to initiate proceeding against the opposite party no. 2 himself under Sections 182 and

211 of the Indian Penal Code, which also after full trial has resulted in conviction of the opposite party no. 2 and others; in the considered opinion of the Court, the present complaint as a fresh case was totally not maintainable, both in law as well as on facts.

11. It would be pertinent to note here that initially the Court had given more than reasonable opportunity to the opposite party no. 2 for proceeding with the complaint and getting witnesses examined. However, having failed to do that, the opposite party no. 2 filed a completely fresh complaint without giving any explanation as to why he had not complied with the earlier orders of the Court in the previous complaint for six months leading to its dismissal. A party cannot be allowed to take benefit of his own gross laches which is writ large in the present case. It would be a mockery if a person is allowed such indulgence, as it would create legal chaos in the sense that after having defaulted and committing mistakes, due to which any application filed by the person is rejected, he would just go ahead by filing a fresh application, turning a complete blind eye to his previous conduct of such gross laches. In fact by such conduct of trying to get over all his previous laches by simply filing a fresh complaint without coming clean and explaining his previous conduct due to which the earlier compliant was dismissed, would clearly be an abuse of

the process of the Court. The Court finds that reliance has rightly been placed by learned counsel for the petitioner on the judgment in **Surender Kaushik** (*supra*) in which it has been held that a second complaint on the same facts would not be maintainable. Paragraph no. 24 of the same reads as under:

> *"24. From the aforesaid decisions, it is quite luminous that the lodgment of two FIRs is not permissible in respect of one and the same incident. The concept of sameness has been given a restricted meaning. It does not encompass filing of a counter FIR relating to the same or connected cognizable offence. What is prohibited is any further complaint by the same complainant and others against the same accused subsequent to the registration of the case under the Code, for an investigation in that regard would have already commenced and allowing registration of further complaint would amount to an improvement of the facts mentioned in the original complaint. As is further made clear by the three-Judge Bench in Upkar Singh, the prohibition does not cover the allegations made by the accused in the first FIR alleging a different version of the same incident. Thus, rival versions in respect of the same incident do take different shapes and in that event, lodgment of two FIRs is permissible."*

12. In the present case, the situation for the opposite party no. 2 is worse, for the reason, that it is not only the second complaint but the facts are also identical and the parties are also the same and the second complaint is by the same complainant himself. On facts also, the Court finds that the allegations that the petitioner and others entered the shop of the opposite party no. 2 at

9.00 P.M. on 01.05.2013 and snatched Rs. 8,000/- and a gold chain, cannot be said to be believable and appears to be cosmetic, only to give some criminal colour to the allegations. Further, with regard to the allegation of the opposite party no. 2 in the complaint itself that on 19.04.2013, the petitioner and others had entered in the house of the opposite party no. 2 and were forcibly trying to keep their goods, which was resisted by the wife of the opposite party no. 2, appears to be incorrect in the background of the fact that the petitioner has some sort of document to prove that there was tenancy between the parties by the late mother of the opposite party no. 2 in favour of the petitioner and, thus, there could not be any occasion to exert force by the petitioner for keeping goods in the place over which he claims to have tenancy. The Court would note here that existence of the document showing tenancy in favour of the petitioner by the late mother of the opposite party no. 2 is not in dispute. However, its authenticity is in dispute, which has still not been proved otherwise by any Court. Thus, till such time there is some sort of evidence in favour of the petitioner, law requires that the same has to be undone or quashed or declared null and void only in accordance with law, by a Civil Court of competent jurisdiction. The Court also finds that the dispute between the parties is basically civil in nature relating to tenancy

of the petitioner in the house/ shop belonging to the mother of the opposite party no. 2, which after her death, may now have devolved upon the opposite party no. 2. Thus, in such view of the matter also, the Court finds that the present case should not be allowed to continue. The Court would further note here that the specific query of the Court, to learned APP and learned counsel for the opposite party no. 2, both relating to law laid down by the Court as well as to the facts of the case, not having been met, has further pursuaded the Court to interfere in the present matter under its inherent power under Section 482 of the Code.

13. Reliance has also rightly been placed by learned counsel for the petitioner on category 7 of the decision in **Bhajan Lal** (supra), where at paragraph no. 102 it has been held 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 serious 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.*
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> *(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."

14. Further, the Court would refer to the decision of the Hon'ble Supreme Court in **State of Karnataka v. L. Muniswamy**

reported as **(1977) 2 SCC 699,** where at paragraph no. 7, it has been held as under:

> *"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……"*

15. With regard to the objection raised by learned counsel for the opposite party no. 2, that the stage of cognizance has passed and charges have been framed, the Court would only refer to the decision of the Hon'ble Supreme Court in **Anand Kumar Mohatta vs. State (Govt. of NCT of Delhi)** reported as **2019 (1) PLJR (SC) 215**, where at paragraphs no. 15, 16 and 17, it has been held as under:

> *"15. First, we would like to deal with the submission of the learned Senior Counsel for the Respondent No. 2 that once the charge sheet is filed, petition for quashing of FIR is untenable. We do not see any merit in this submission, keeping in mind the position of this Court in Joseph Salvaraj A. v. State of Gujarat. In the case of Joseph Salvaraj A. (supra), this Court while deciding the question whether the High*

Court could entertain the 482 petition for quashing of FIR, when the charge sheet was filed by the police during the pendency of the 482 petition, observed:-

> *"16. Thus, from the general conspectus of the various sections under which the appellant is being charged and is to be prosecuted would show that the same are not made out even prima facie from the complainant's FIR. Even if the charge-sheet had been filed, the learned Single Judge could have still examined whether the offences alleged to have been committed by the appellant were prima facie made out from the complainant's FIR, charge-sheet, documents, etc. or not."*

16. Even otherwise it must be remembered that the provision invoked by the accused before the High Court is Section 482 Cr. P.C and that this Court is 16. Even otherwise it must be remembered that the provision invoked by the accused before the High Court is Section 482 Cr. P.C and that this Court is hearing an appeal from an order under Section 482 of Cr.P.C. Section 482 of Cr.P.C reads as follows:-

> *"482. Saving of inherent power of the High Court.- Nothing in this Code shall be deemed to limit or affect the inherent powers of the High Court to make such orders as may be necessary to give effect to any order under this Code, or to prevent abuse of the process of any Court or otherwise to secure the ends of justice."*

17. There is nothing in the words of this Section which restricts the exercise of the power of the Court to prevent the abuse of process of Court or miscarriage of justice only to the stage of the FIR. It is settled principle of law that the High Court can exercise jurisdiction under Section 482 of Cr.P.C. even when the discharge application is pending with the trial Court. Indeed it would be a travesty to hold that proceedings initiated against a person can be interfered with at the

> *stage of FIR but not if it has advanced, and the allegations have materialized into a charge sheet. On the contrary it could be said that the abuse of process caused by FIR stands aggravated if the FIR has taken the form of a charge sheet after investigation. The power is undoubtedly conferred to prevent abuse of process of power of any court."*

16. Thus, there remains no doubt that the power under Section 482 is conferred to prevent abuse of the process of the power of any Court no matter at what stage the proceedings are pending.

17. Moreover, once the Court had dismissed the complaint of the opposite party no. 2, may be for any reason, a second complaint, which is identical to the complaint which was dismissed, filed by the same complainant and against the same accused and cognizance being taken in the said case, that too by the same Court which had earlier dismissed the complaint, is clearly not permitted under law.

18. In the aforesaid background, the Court finds that the present case has been filed for oblique reasons and lacks *bona fide* and, thus, both, for preventing the abuse of the process of the Court and for securing the ends of justice, the continuation of the criminal case cannot be allowed.

19. Accordingly, the application is allowed. The entire criminal proceeding arising out of Complaint Case No. 28282 (C)

of 2014, pending before the concerned Judicial Magistrate, 1st Class, Patna, including the order taking cognizance dated 10.08.2015 as well as all subsequent orders passed by the Courts below at Patna, stands quashed.

(Ahsanuddin Amanullah, J.)

Anand Kr.

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