

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.21402 of 2013**

Arising Out of Case No.-546 (C) Year-2003 Thana- MADHEPURA COMPALINT CASE
District- Madhepura

Thresiamma Jose @ Thresiamma Kalpura D/O Joseph Kalpura Resident Of
Village- Shahpur, Santhali Tola, Police Station- Goalpara, District-
Madhepura

... .. Petitioner/s

Versus

1. The State Of Bihar
2. Md. Rajbool, S/o Md. Muslim (Complainant No. 2) is resident of village-
Rahta, Police Station- Udakishanganj, District- Madhepura.

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr. Najmul Hoda, Advocate
For the State	:	Mr. Jharkhandi Upadhyay, APP
For the O. P. No. 2	:	Mr. Pawan Kumar, Advocate

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

Date : 04-04-2019

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 application is for quashing the order dated
20.02.2013 (Contained in Annexure-9) of Sri Avinash
Kumar, Judicial Magistrate, 1st Class, Madhepura,
passed in complaint Case No. 546(C)/03 taking
cognizance under section 420 of the Indian penal Code
in the circumstances set forth below.”*



3. The allegation against the petitioner is that the tractor was taken by her from the opposite party no. 2 - complainant, after giving a cheque of Rs. 60,000/- for a total consideration amount of Rs. 1,35,000/- with the promise that within 15 days the remaining Rs. 75,000/- would be paid to the opposite party no. 2 and despite the opposite party no. 2 repeatedly asking for the money and also being ready to transfer the ownership of the vehicle in favour of the petitioner, the petitioner was not cooperating.

4. Learned counsel for the petitioner submitted that the complaint case is totally false, frivolous and motivated. It was submitted that the allegations made in the complaint, even if accepted at face value, in its entirety, discloses, at best, a civil cause of action to the opposite party no. 2 as no criminal element is reflected from the same. Learned counsel submitted that the complaint suffers from both suppression of facts and incorrect facts. It was submitted that the opposite party no. 2 was released on bail in terms of the order of the High Court dated 08.07.2003 whereas in the complaint it has been written that he was released on 25.08.2003, which is a false statement made by him on oath. It was submitted that much prior to filing of the present complaint on 05.08.2003, the petitioner had lodged Udakishanganj (Gwalpara) P.S. Case No. 67 of 2002 on 20.07.2002 against the opposite party



no. 2 and four others with regard to her being cheated by them in the same transaction. It was alleged that the accused had represented that they would get the ownership transferred from the original owner of the tractor directly in the name of the petitioner within 15 days after repaying the loan which he had taken and was outstanding from the Bank. It was further submitted that it was also agreed that whatever amount would be spent by the petitioner on repairing the tractor, would be adjusted from the total consideration amount and the same came to Rs. 25,000/- and, thus, the total being Rs. 85,000/-, when the petitioner wanted either the opposite party no. 2 to transfer the tractor in her name or return Rs. 85,000/-, both was refused. It was further alleged that because of lack of ownership paper in favour of the petitioner she was not being able to use the tractor for any purpose. Learned counsel submitted that the opposite party no. 2 and other accused persons of the F.I.R. lodged by the petitioner being guilty of criminal offence would be established from the fact that in the complaint itself, it has been stated that the date of occurrence began on 15.06.2001. It was submitted that on 15.06.2001, the opposite party no. 2 was not the owner of the tractor as would be clear from the owner book which discloses that the ownership of the tractor was transferred in the name of the opposite party no. 2 only



on 18.09.2003 i.e., more than 2 years after the opposite party no. 2 having promised to transfer the ownership in favour of the petitioner and even after more than a month of filing of the present complaint. Learned counsel submitted that in the F.I.R. lodged by the petitioner, the trial has reached the final stage and is likely to be concluded soon.

5. Learned A.P.P. submitted that though a case is made out from the complaint, but in the background of the facts and circumstances of the case, the matter relates to a money transaction with regard to sale/purchase of a tractor, which is a civil dispute. He fairly submitted that in such background the complaint case, being a criminal proceeding, is not justified.

6. Learned counsel for the opposite party no. 2 submitted that the petitioner has cheated the opposite party no. 2 and had abused the trust that was reposed in her. It was submitted that after taking the tractor by paying only Rs. 60,000/- out of the total amount of Rs. 1,35,000/-, the tractor has been used and has brought earnings to the petitioner and when the time came for the petitioner to pay the remaining consideration amount, by not doing so, she is guilty of committing the offence. Learned counsel further drew the attention of the Court to the order passed by the co-ordinate Bench of this Court on 02.04.2010 in Criminal Misc.



No. 56398 of 2007 in a case filed by the petitioner challenging the order passed by the Revisional Court against the order of the Judicial Magistrate, 1st Class, Madhepura by which the complaint filed by the petitioner was dismissed and the revision filed by the opposite party no. 2 was allowed and the said order was set aside and the Chief Judicial Magistrate, Madhepura was directed to make further enquiry. It was submitted that the High Court had dismissed the same. At this juncture, on a query of the Court as to how a criminal proceeding is maintainable when the dispute arises out of a sale/purchase agreement between the parties, for which the remedy, in law, is to move before the Civil Court of competent jurisdiction and further how such complaint is even maintainable in view of the fact that from 15.06.2001, when the tractor is said to have been taken by the petitioner, till 17.09.2003, when the ownership of the tractor had not been transferred in the name of the opposite party no. 2, and the same is also more than a month after filing of the complaint by the opposite party no. 2, learned counsel was not in a position to give any reply.

7. 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.



8. As has rightly been submitted by learned counsel for the petitioner, the entire complaint does not disclose any criminal offence. It relates to a purely sale/purchase between the parties and if there is any dispute arising out of the same, the cause of action can give rise only to a proceeding before the Civil Court of competent jurisdiction and for such cause of action, instituting a criminal proceeding is clearly an abuse of the process of the Court. Moreover, the opposite party no. 2 himself has much to explain, as from the facts, it transpires that he has not acted as per the requirement of the law, inasmuch as when the tractor in question was not in his name, he was not competent either to sell or give it away to a 3rd person, i.e., the petitioner. He himself acquired such right more than a month after filing of the complaint and more than two years after he had taken a cheque of Rs. 60,000/- from the petitioner and had handed over the tractor to her. The person who himself commits an illegality cannot take a stand that despite having committed an illegality, based on such illegality, a right has accrued and for which he may agitate before a forum in law. Furthermore, a co-ordinate Bench of this Court while dismissing the case filed by the petitioner against an order of remand with regard to dismissal of the complaint, on 02.04.2010, had observed that due to the opposite party no. 2 not being the owner of the



tractor, he could not claim remuneration from the tractor and such aspect was to be judged at the stage of cognizance. Thus, such aspect was required to be taken note of by the Court below before passing of the impugned order taking cognizance. This, in fact supports the contention of the petitioner that the order impugned is not a considered order.

9. The Hon'ble Supreme Court in **State of Haryana v. Bhajan Lal**, reported as **1992 Supplementary (1) Supreme Court Cases 335**, at paragraph no. 102, has enumerated categories where the Court ought to 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 omission 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.”

10. The present case, in the opinion of the Court, falls under category 7 of the aforesaid judgment in **Bhajan Lal** (supra) at paragraph no. 102.

11. Further, the Hon’ble Supreme Court in **State of Karnataka v. L. Muniswamy**, reported as (1977) 2 Supreme Court Cases 699, at paragraph no. 7 has observed 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.....”



12. In view of the aforesaid, the Court finds that the present complaint case is *mala fide*, frivolous and totally untenable and has been lodged for the purpose of wreaking vengeance and harassing the petitioner.

13. Accordingly, the application is allowed. The entire criminal proceeding arising out of Complaint Case No. 546 (C) of 2003, including the order dated 20.03.2013 by which cognizance has been taken, stands quashed.

14. The Lower Court Records be returned forthwith.

(Ahsanuddin Amanullah, J)

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