

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.16400 of 2016

Arising Out of PS. Case No.-1653 Year-2011 Thana- GOPALGANJ COMPLAINT CASE
District- Gopalganj

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Ravi Shankar Dubey S/o Sarbdeo Dubey, Resident of Village and P.O.-
Meethabhel, P.S.- Jhanghana District- Gorakhpur, Uttar Pradesh.

... .. Petitioner

Versus

1. The State of Bihar
2. Chandeshwar Rai, son of Late Bindeshwari Rai, Resident of Village-
Baraniya Rajaram, P.S.- Gopalpur, District- Gopalganj.

... .. Opposite Party

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Appearance :

For the Petitioner	:	Mr.Mukesh Kant, Advocate
For the State	:	Mr.Md.Arif APP
For the OP No.2	:	Mr.Lokesh Kumar Singh, Advocate

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CORAM: HONOURABLE MR. JUSTICE CHANDRA SHEKHAR JHA
ORAL JUDGMENT

Date : 28-03-2024

Heard learned counsel for the petitioner
and learned A.P.P. for the State duly assisted by
learned counsel for the opposite party no. 2.

2. The present application has been filed
for quashing the order dated 16.03.2013 passed by
learned Judicial Magistrate, Gopalganj in TR No.
1566/2013 whereby learned Magistrate took
cognizance against the petitioner for the offence
under Section 406/420 and 504 of the Indian Penal
Code (in short the 'I.P.C.') in Complaint Case No.
1653 of 2011.



3. The brief facts of the case is that complainant was the Godown Manager of Food Corporation of India (in short the 'FCI'), Koini, Gopalganj and petitioner was Godown Manager Incharge of Bihar State Food Corporation (in short the 'SFC'). It is alleged that petitioner used to lift the grains from the Godown of complainant after depositing the cost and, during 30.08.2010 to 31.12.2010, a total sum of Rs. 62,82,212.50 was deposited by the petitioner with FCI, Chapra against which delivery order of lifting 58928.25 quintals of rice was obtained. Thereafter, complainant was engaged in flood relief work and by taking advantage of engagement of complainant in the said relief work, petitioner lifted 11322 quintals of rice, for which complainant asked the petitioner regarding his misconduct and thereafter, petitioner assured him to deposit the cost of excess lifting of grains.

4. Learned counsel appearing on behalf of the petitioner submitted that the present complaint case was brought by the complainant in



private capacity and not as an authorized complainant on behalf of the SFC. It is submitted that when in-house inquiry was initiated by SFC for defalcated amount of paddy, the present complaint case was lodged by opposite party no. 2 against petitioner. It is submitted that for same set of occurrence, Area Manager of FCI also lodged a case being Case No. RC0232011A0020 dated 30.11.2011 for the offence under Section 120B read with 409 of the I.P.C. and Section 13(1)(c)&(d) of the Prevention of Corruption Act, 1988. Learned counsel submits that the said case was handed over to Central Bureau of Investigation (in short the 'CBI') for investigation. It is submitted that petitioner is Assistant Manager of SFC, whereas opposite party no.2 is the Manager Incharge. It is further submitted that after investigation by CBI, complainant himself found accused for defalcated amount of paddy and charge-sheet was submitted against him for the offences under Section 406 and 420 of the I.P.C., where petitioner stands as a witness at serial no. 14 amongst the list of



witnesses in RC Case No. 20(A)/2011. It is submitted that it is a classical case of malicious prosecution and after getting the case investigated by CBI where charge-sheet submitted against complainant for the occurrence, nothing survives against this petitioner and, as such, impugned order dated 16.03.2013, by which cognizance has been taken against this petitioner, is liable to be set-aside and quashed.

5. Learned A.P.P. for the State duly assisted by learned counsel for the opposite party no. 2 while opposing the application fairly conceded that the present complaint was lodged after initiation of in-house inquiry against the complainant regarding defalcated amount of paddy.

6. It would be apposite to reproduce paragraph '102' of the legal report of Hon'ble Supreme Court in the case of **State of Haryana and Ors. Vs. Bhajan Lal and Ors [(1992) Supp (1) SCC 335]** which is being reproduced hereunder for a ready reference:

"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 Act



concerned (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 Act concerned, 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.”

7. Having regard to the aforesaid submission of the parties, it appears that the CBI has found the allegation true against the complainant for the same set of occurrence, for which the present complaint case was lodged, where in case of CBI, petitioner stands as a witness, therefore, *prima-facie*, it appears that the present complaint case is nothing but a malicious prosecution brought by the complainant with an ulterior and oblique motive.

8. Accordingly, the present case is covered under the guideline nos. 1,5 and 7 of the legal report of Hon’ble Supreme Court in the case of **Bhajan Lal** (supra), therefore, the impugned order dated 16.03.2013 passed by learned Judicial Magistrate, Gopalganj in TR No. 1566/2013 *qua*



petitioner with all it’s consequential proceedings is quashed and set-aside.

9. This application stands allowed.

10. Let a copy of this judgment be sent to learned court below immediately.

(Chandra Shekhar Jha, J.)

Rajeev/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	28.03.2024
Transmission Date	28.03.2024

