

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.50408 of 2014**

Arising Out of PS. Case No.-292 Year-2012 Thana- BUXAR (T) District- Buxar

Rang Bahadur Singh son of Ram Nandan Singh, resident of village-
Sujayatpur, P.S. Dhansoi, District- Buxar

... .. Petitioner/s

Versus

1. The State Of Bihar
2. Binod Kumar Singh son of Ramdeo Singh, resident of Chandani Chowk- 11
No. Law, Gajadhar Ganj, P.S.- Buxar (M), District- Buxar

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr. Bachan Jee Ojha, Advocate
For the State	:	Mr. Abhay Kumar No. 1, APP
For the O.P. No. 2	:	Mr. Alok Ranjan, Advocate

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

Date : 03-04-2019

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 is an application for quashing the order
taking cognizance dated 26.07.2013 passed in Buxar
(T) P.S. Case No. 292/12 G.R. No. 1856/2012, passed
by learned Chief Judicial Magistrate, Buxar by which
learned C.J.M. took cognizance for the offence under
section 420 and 406 of the Indian Penal Code against
the petitioner without appreciating the facts and
circumstances of the case which is purely a civil
dispute.”*



3. The allegation against the petitioner is that despite taking Rs. 11,00,000/- from the opposite party no. 2-informant, when he went to him and gave further Rs. 1,00,000/- cash, thus completing the total amount for which the petitioner is alleged to have agreed to transfer a piece of land in his favour, on the pretext of illness of his wife, the opposite party no. 2 was asked to wait. It is alleged that inspite of such assurance, the petitioner transferred the said land in favour of another person through registered sale deed and despite the opposite party no. 2 asking him to return Rs. 12,00,000/-, the same was not being returned.

4. Learned counsel for the petitioner submitted that the entire criminal prosecution is totally *mala fide*, malicious and abuse of the process of the Court. Learned counsel submitted that the present case disclosing a purely civil cause of action, criminal proceeding is not sustainable. It was contended that the only remedy available to the opposite party no. 2 was to go before the Civil Court of competent jurisdiction for specific performance of the agreement or cancellation of the sale deed in favour of the other person or in a money suit for recovery of the amount claimed to have been paid by the opposite party no. 2 to the petitioner. Learned counsel submitted that even otherwise, the so called agreement between the parties was the result of coercion



due to which the petitioner had filed Complaint Case No. 923(C) of 2012 before the Chief Judicial Magistrate, Buxar on 18.08.2012 alleging that he was forced to sign on plain paper and non-judicial paper, which was later on converted into an agreement for sale. It was submitted that as a retaliation, the present case has been filed on 29.08.2012. Learned counsel further submitted that the land in question was a valuable land and the person to whom it was sold was for Rs. 16,80,000/- which was much beyond the amount which the opposite party no. 2 claims to have been agreed by the petitioner. Learned counsel submitted that even as per the F.I.R., the last instalment of Rs. 1,00,000/- cash is alleged to have been accepted by the petitioner on 13.12.2011 and thereafter, there is no explanation as to why the opposite party no. 2 waited for more than nine months before lodging the F.I.R.

5. Learned A.P.P. submitted that the Court, after perusing the materials, including those which have come during the police investigation, has taken cognizance.

6. Learned counsel for the opposite party no. 2 submitted that the petitioner has cheated him by not transferring the land in question despite having taken Rs. 12,00,000/- and when he had gone to his place, he was abused and sent away and even at the behest of *panches*, neither the money was returned nor sale



deed was executed and that when he went to the police station, he was asked to file case before the Court. Learned counsel submitted that he has filed a suit for specific performance against the petitioner which has been decreed in his favour. At this juncture, when the Court called upon learned counsel for the petitioner to inform as to what has been the result of such order, learned counsel for the petitioner submitted that appeal has been filed by the petitioner which is pending.

7. At this juncture, on a query of the Court, as to how learned counsel for the opposite party no. 2 was making such submission, when there was absolutely not even a whisper with regard to such fact in the *fardbeyan*, which is a neatly typed document, learned counsel could not show to the Court any such averment in the written *fardbeyan* of the opposite party no. 2.

8. 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.

9. At the very outset, there is no doubt in the mind of the Court that from the entire reading of the F.I.R., no criminal offence is made out. Even if the entire story, as narrated in the F.I.R., is accepted to be true at his face value, at best, a civil cause of action accrues to the opposite party no. 2 and the remedy would, thus, be



available before the Civil Court of competent jurisdiction for either recovery of the money or for specific performance of agreement or for cancellation of the sale deed of the land in favour of another person. Further, the Court finds that when the opposite party no. 2 himself has moved before the Civil Court in a suit for specific performance which has been decreed in his favour, all the more reason the criminal case should not continue. At the cost of repetition, the Court would only observe that before the Civil Court, the opposite party no. 2 has got all options, including asking for compensation for the loss, which he may have suffered. However, in any view of the matter, in the considered opinion of the Court, a criminal proceeding, in the particular facts and circumstances of the present case, is absolutely not maintainable and is an abuse of the process of the Court.

10. In **State of Haryana v. Bhajan Lal** reported as **1992 Supplementary (1) Supreme Court Cases 335**, the Hon'ble Supreme Court at paragraph no. 102 has enumerated various categories under which 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 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.”

11. The Court finds that the present case is covered under category 7 of the aforesaid judgment in **Bhajan Lal** (supra) at paragraph no. 102.

12. In **State of Karnataka v. L. Muniswamy** reported as **(1977) 2 Supreme Court Cases 699** the Hon'ble Supreme Court at paragraph no. 7 has 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.....”

13. In the aforesaid background, the Court finds that the present criminal prosecution is malicious, *mala fide* and only for the purpose of wreaking vengeance against the petitioner and to harass him.

14. Accordingly, the application is allowed. The entire criminal proceeding arising out of Buxar (T) P.S. Case No. 292 of 2012 (G.R. No. 1856 of 2012) pending before the Court below at Buxar, including the order dated 26.07.2013 by which cognizance has been taken, stands quashed.

(Ahsanuddin Amanullah, J)

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