

**Dinesh Kumar, and anr. Vs. State of Bihar, and anr.**

**Dinesh Kumar, and anr. Vs. State of Bihar, and anr.**

**SooperKanoon Citation : [sooperkanoon.com/916142](http://sooperkanoon.com/916142)**

**Court : Patna**

**Decided On : Sep-15-2010**

**Judge : Akhilesh Chandra, J.**

**Acts : Indian Penal Code (IPC) - Sections 323, 342, 379, 384; Code of Criminal Procedure (CrPC) - Sections 97, 482, 156(1), 155(2)**

**Appeal No. : CRIMINAL MISCELLANIOUS No.28878 OF 2004**

**Appellant : Dinesh Kumar, and anr.**

**Respondent : State of Bihar, and anr.**

**Advocate for Def. : Mr. Parmanand Prasad, Adv.**

**Advocate for Pet/Ap. : Mr. N.K. Agarwal; Mr. Uday Chand Prasad; Mr. Binod Kumar Singh; Mr. Ranjeet Kumar, Advs.**

**Judgement :**

1. Heard learned counsel for the petitioners, learned Additional Public Prosecutor for the State and learned counsel for the complainant opposite party no.2.

2. This is an application for quashing of the order dated 14.07.2004 passed by the learned Sr. G.C. Gupta, Judicial Magistrate, 1st Class, Siwan, passed in Complaint Case No. 1170 of 2003, Trial No. 1330 of 2004 taking cognizance for the offence under Sections 323, 342, 379 and 384 of the Indian Penal Code.

3. The relevant facts of this case is that opposite party no.2 filed the Complaint Case No. 1170/2003 on 21.08.2004 in the court of Chief Judicial Magistrate, Siwan, stating therein that on 19.08.2003 at about 11 A.M. while he was sitting along with his father Parsuram Prasad at their roadside shop at Titra Bazar, the petitioners with four constables arrived there on a jeep and petitioner no.2, a peon, came to their shop asked about father of the complainant who was being called by petitioner no.1 who on inquiry disclosed that he is an officer of Co-operative Bank, Siwan, and has come to recover the loan earlier given to him. He was replied that payment has already been made to Chairman of PACs, Bhrigunath Prasad, on issuance of receipt of no dues certificate inspite of offer to show such documents the petitioners with help of constables arrested father of the complainant with a direction to him to come at Siwan with all relevant papers. Who followed them and shown relevant papers at Siwan, but there was an additional demand of Rs. 5,000/- which could not be paid resulting into wrongful confinement of complainant's father in a dilapidated room having damaged roof and containing rain water etc. On query his father also narrated that he has been assaulted and deprived of Rs. 5,000/- with some change and also forced to put signatures and LTI on different papers. The complainant was also abused, when he enquired about such misbehaviour went to complain with District Co-Operative Officer, who also advised him to satisfy demands of petitioner no.1, even the police was not ready to entertain the complainant. The complainant who ultimately filed the complaint petition which was ready to be filed on 20.08.2003 itself, but, could be filed on 21.08.2003.

4. It is also admitted that with the simultaneous filing of the complaint petition complainant filed a fresh petition before the court for issuance of search warrant under section 97 of the Criminal Procedure Code, but it was turned down by a detailed order, thereafter as per complainant opposite party no.2 he filed the petition before the District Magistrate, Siwan, who issued notice on 27.08.2003 to show cause against the petitioner thereafter anyhow complainant's father could be released that means as alleged also wrongful confinement was from 19.08.2003 to 28.08.2003, the parties have filed supplementary affidavit and counter affidavit in reply to contentions of each other and this much is admitted now that complainant and his father both are loanee of the Co-operative Bank, Siwan, and petitioners

are employees as Manager and Peon respectively.

5. It is submitted on behalf of petitioners that only because of proceedings being initiated against the loanees who were avoiding to pay the dues and the certificate proceedings were in the process of being filed the complaint being attached with the PACs just to install the proceedings to be filed against him and his father came up with the complaint containing frivolous allegation. Had his father been apprehended and kept confined at a place stated by him where he had every excess and in regular touch as alleged with his father, it could not have been possible for any authority to keep his father confined under any illegal detention. Father of the complainant was neither apprehended nor brought to Siwan or any place but it is the complainant who without any such occurrence taking place got the case prepared and filed, kept mum against the order refusing the issuance of warrant from the court and also proceeded very stealthily before the District Magistrate, from where he just obtain an order to show cause but thereafter has not even care to see whether such notice was served upon the petitioners or not. There is no chit of document in support of the contention of opposite party no.2 that no notice issued from the District Magistrate, his father was released. Had it been so the complainant must have further persuade with the District Magistrate for necessary actions, but nothing of the kind could be done only because entire averments made in the complaint petition as well as petitions filed before the District Magistrate, were fake and concocted. Further inquiry in the matter could have revealed the hollowness and the wrongs at the hands of the petitioners and his father.

6. On the other hand, learned counsel for the opposite party no.2 though admits that the two certificate proceeding, one against him and other against his father are pending, but he has instead of filing any objection, they are challenged the authority of filing such certificate proceeding and on hearing in counter arguments no reply could be given by learned counsel for the opposite party as to service of notice to show cause upon the petitioners said to have been issued by the District Magistrate and any action thereafter the document on record along with supplementary affidavit simply to show that one petition was filed before the District Magistrate by the complainant whereupon there was an order seeking

show cause but whether it was issued and served?, there is nothing to show.

7. That apart from the plain reading of the complaint petition, it appears that it is full of improbable story even assuming for the argument said that father of the complainant was apprehended by the petitioners from near his shop with the help of four police constables and at that time no objection could be raised by anyone, but soon thereafter as alleged complainant arrived at Siwan remained and continued in regular contact with his father who was as said kept confined but not in police custody. No location of such place has been stated by the complainant in the complaint petition as well as in the petitions filed before other authorities including court below.

8. Undoubtedly, opposite party no.2 and his father both are loanee and there are two different certificate proceedings against them. No doubt, they have come forward with a case that money has already been paid to the PACs chairman deposited the money in the account of Bank. if it is so, what prevented them to bring all these facts before the Certificate Officer, Siwan, in the proceeding, but instead of doing so, complaint petition in hand has been filed and the averments as stated earlier appears improbable giving room to submissions made on behalf of the petitioners that such complaint has been filed just for ulterior motive to prevent the authorities from initiating and proceed with the proceeding for recovery of the money advanced by the Bank to the loanees including opposite party no.2 and his father.

9. The law does not permit to entertain and proceed with such complaint and the case stands squarely covered under more than one yardstick fixed for interference by this court in exercise of inherent jurisdiction and prescribed under Section 482 of the Criminal Procedure Code which has been followed by the subsequent decision of Apex Court and this Court also in the case of State of Haryana & others v. Choudhary Bhajan Lal & others reported in A.I.R. 1992 SCC 604 which read as such:

"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 F.I.R. 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 F.I.R. 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 F.I.R. 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. In view of the above, if the proceeding before the court below is permitted to continue, it shall be nothing but abuse of the process of law and wastage of precious judicial time.

11. In the result, impugned order as well as complaint petition both is hereby quashed and application stands allowed.