

**Vikas Kumar and anr Vs. the State of Jharkhand and anr**

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**Court :** Jharkhand

**Decided On :** Mar-06-2013

**Appellant :** Vikas Kumar and anr

**Respondent :** The State of Jharkhand and anr

**Judgement :**

In the High Court of Jharkhand at Ranchi Cr.M.P. No. 1200 o

1. Vikas Kumar 2.Amitava Kumar Chatterjee.....Petitioners VERSUS State of Jharkhand and another .....Opposite Parties CORAM: HONBLE MR. JUSTICE R.R.PRASAD For the Petitioners:Mr.P.P.N.Roy, Sr. Advocate For the State :A.P.P For the O.P. No. 2 : Mr.K.P.Choudhary 11/ 6.3.13. Heard learned counsel appearing for the petitioners and learned counsel appearing for the opposite party no.2 as well as learned counsel appearing for the State. This application has been filed for quashing of the order dated 23.2.2012 passed in Complaint Case bearing C/1 case no. 2964 of 2011 whereby and whereunder the then Judicial Magistrate, Jamshedpur has taken cognizance of the offence punishable under Sections 323 and 504 of the Indian Penal Code against the petitioners. Mr.P.P.N.Roy, learned Sr. counsel appearing for the petitioners submits that it is the case of the complainant itself that the complainant had taken loan from the Sakchi Branch of State Bank of India, Jamshedpur under the Prime Minister Rojgar Yajna and that was to be paid in 60 equal instalments @ Rs.1923/- but when the complainant failed to make payment of the instalments, a certificate proceeding got initiated at the instance of the petitioners in which notice was

issued under Section 7 of the Bihar and Orissa (Public Demand Recovery) Act and only after coming to know that a certificate proceeding has been initiated against the complainant, the complainant lodged a complaint alleging therein that these two petitioners called the complainant in chamber and abused her in filthy language and had forced the complainant to sign over some format of the Bank and when the protest was made, she was pushed, as a result of which, she sustained injury which allegation, in the facts and circumstances, can be said to be actuated with malice for the reason that the Bank had proceeded to realize the amount from the complainant and therefore, the instant prosecution is fit to be quashed as this has been filed with mala fide purpose. As against this, Mr. K.P.Choudhary, learned counsel appearing for the opposite party no.2 submits that it is true that the complainant had taken loan from the Bank and EMI was fixed as Rs.1923/- to be paid in 60 equal instalments but the complainant was depositing EMI @ Rs.2000/- per month and thereby the complainant never defaulted in making payment of instalments, still a certificate proceeding was initiated against the complainant and when the complainant came to know about it, she approached to the petitioners and raised her grievances, upon it she was abused and was even pushed by the petitioners, as a result of which she fell down and sustained injury and in such event, the instant prosecution can never be said to have been actuated with malice and as such, the complaint case never warrants to be quashed. It be recorded that the Hon'ble Supreme Court in a case of State of Haryana and others vs. Bhajan Lal and others [1992 Supp (1) SCC 335] has been pleased to lay down the categories of the cases byway of illustrations wherein extraordinary power under Article 226 of the Constitution of India or the inherent power under Section 482 of the Code of Criminal Procedure can be exercised by the High Court either to prevent abuse of the process of any court or otherwise to secure ends of justice. One of such categories is as follows: where a criminal proceeding is manifestly attended with mala fide/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. As has been noticed above, loan had been sanctioned in favour of the complainant in the year 2008 by the Bank to which these two petitioners are the officers and the EMI was fixed as Rs.1923/- to be paid every month in 60 equal instalments which

according to the petitioners was not paid, though the stand which has been taken by the complainant is that the complainant has regularly been paying the amount more than the amount fixed as EMI. Be that as it may, it has been accepted by the complainant in the complaint petition itself that the complainant had received a notice issued under Section 7 of the Bihar and Orissa (Public Demand Recovery) Act. In such situation, when the Bank officials had already taken step for realization of the amount, it does not stand to reason as to why the complainant would be called by the petitioners in the chamber for asking her to make payment and thereby whatever allegations have been levelled against the petitioners of abusing or even causing injury appears to be actuated with malice. In such situation, if the complaint case is allowed to be proceeded with, it would amount to abuse of the process of the court. Accordingly, the entire criminal proceeding of C/1 case no.2964 of 2011 including the order dated 23.2.2012 taking cognizance is hereby quashed. In the result, this application is allowed. ( R.R.Prasad, J.) ND/

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