IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.26482 of 2017

CNR No. BRHC010327702017

Arising Out of PS. Case No.-320 Year-2013 Thana- BAKHARI District- Begusarai

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1. Md. Moajjam,
2. Md. Hasim,
   Both sons of Md. Masnu,
3. Md. Mojibuddin @ Md. Mojid @ Md. Mojib, son of Late Nabbu,
4. Sajid Alam @ Md. Sajid, son of Md. Moajjam,
   all are residents of Chakhamid, P.S.- Bakhri, District- Begusarai.

... ... Petitioner/s

Versus

1. The State of Bihar
2. Abdul Halim, son of Late Salimuddin, residents of Chakhamid, P.S.- Bakhri, District- Begusarai.

... ... Opposite Party/s

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Appearance :

For the Petitioner/s	:	Mr. Pritish Kumar Lal, Advocate
For the State	:	Mr. Jharkhandi Upadhyay, APP
For the Informant	:	Mr. Ajay Kumar Thakur, Advocate Mr. Purushottam Kumar, Advocate Mr. Abhijeet Chandra, Advocate

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CORAM: HONOURABLE MR. JUSTICE RANA VIKRAM SINGH
C.A.V. JUDGMENT
Date : 06-11-2026

The present application has been filed under Section 482 of the Code of Criminal Procedure, 1973 *(in short **Cr.P.C.**)*, seeking quashing of the order dated 28.10.2015 passed by the learned Judicial Magistrate, 1st Class, Begusarai, in G.R. Case No. 5420 of 2013, arising out of Bakhari P.S. Case No. 320 of 2013, whereby cognizance had been taken against the petitioners for the offences punishable under Sections 143, 341,

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323, 504 and 379 of the Indian Penal Code *(in short **I.P.C.**)* and Sections 25(1-B)(a)/26 of the Arms Act, 1959 *(in short **Arms Act**)*. The petitioners have also challenged the order dated 21.03.2017 passed by the learned Additional Sessions Judge-I, Begusarai, in Criminal Revision No. 520 of 2015, whereby the revision preferred against the order taking cognizance was dismissed.

2. The prosecution case, in brief, is that on 09.12.2013, at about 10:30 A.M., the informant, Abdul Halim, along with his companion Md. Badruddin, was proceeding towards his brick kiln carrying a sum of Rs. 80,000/- for payment of wages to labourers, when they reached near the shop of petitioner No. 1, situated adjacent to the Idgah at Hakhamid, the four petitioners allegedly intercepted them on a motorcycle and threatened them with firearms. It is alleged that petitioner No. 1, Md. Moajjam, threatened the informant on account of the cancellation of his dealership and snatched the aforesaid cash amount. Upon the informant and his companion raising an alarm, several co-villagers arrived at the spot, whereupon the accused persons allegedly attempted to flee. In the course of the occurrence, a pistol allegedly fell from the possession of petitioner No. 1, which was handed over to the police by the

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informant and his companion. The police seized the pistol along with one live cartridge of .315 bore under a production-cum-seizure list dated 09.12.2013.

3. On the basis of the written report of the informant, Bakhari P.S. Case No. 320 of 2013 was instituted. Upon completion of investigation, the investigating officer submitted Final Form No. 64/15 dated 31.03.2015, holding the occurrence as false and recommending prosecution of the informant under Sections 182 and 211 of the I.P.C. The informant thereafter filed an application for taking cognizance of offence and thereafter upon consideration of the petition and the materials available in the case diary, the learned Judicial Magistrate, 1st Class, Begusarai, differed with the police report and, by order dated 28.10.2015, took cognizance of the offences under Sections 143, 341, 323, 504 and 379 of the I.P.C. and Sections 25(1-B)(a)/26 of the Arms Act, and summoned the petitioners to face trial.

4. Aggrieved by the aforesaid order, the petitioners preferred Criminal Revision No. 520 of 2015 before the learned Additional Sessions Judge-I, Begusarai. By order dated 21.03.2017, the learned Revisional Court dismissed the revision petition, holding that the materials on record disclosed a *prima*

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facie case against the petitioners. The learned Revisional Court further observed that the objection regarding the requirement of sanction for prosecution under the Arms Act could be raised at the stage of framing of charge. Being aggrieved by the orders passed by the learned Trial Court, the petitioners have approached this Court by filing the present application under Section 482 of the Cr.P.C., seeking quashing of the order taking cognizance and the consequential criminal proceedings.

5. Mr. Pritish Kumar Lal, learned counsel appearing on behalf of the petitioners submitted that the impugned order dated 28.10.2015, whereby cognizance was taken against the petitioners, is unsustainable in law, particularly when the investigating officer, upon completion of investigation, had submitted a final report treating the allegations as false.

6. It is submitted that the prosecution under the Arms Act, suffers from non-compliance with the mandatory requirement of prior sanction under Section 39 of the Act *(supra)*. Learned counsel contended that the aforesaid legal infirmity was not properly appreciated by the learned Revisional Court while dismissing Criminal Revision No. 520 of 2015 under order dated 21.03.2017.

7. In view of the aforesaid submissions, learned

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counsel prayed that the impugned order taking cognizance, the order passed in revision and the consequential criminal proceedings be quashed in exercise of the inherent jurisdiction of this Court under Section 482 of the Cr.P.C.

8. Mr. Ajay Kumar Thakur, learned counsel appearing on behalf of Opposite Party No. 2 opposed the prayer for quashing and submitted that the learned Magistrate had rightly taken cognizance after considering the protest petition and the materials available on record, notwithstanding the final report submitted by the investigating officer.

9. It was further submitted that the order taking cognizance did not suffer from any illegality warranting interference by this Court, particularly when the Revisional Court had also examined the matter and dismissed Criminal Revision No. 520 of 2015 by order dated 21.03.2017.

10. Accordingly, learned counsel prayed for dismissal of the present application, submitting that no ground for interference under Section 482 of the Cr.P.C., has been made out.

11. Mr. Jharkhandi Upadhyay, learned Additional Public Prosecutor for the State opposed the prayer for quashing and submitted that the learned Magistrate had rightly taken

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cognizance of the offences after considering the materials available on record, notwithstanding the final report submitted by the investigating officer.

12. It is contended that the learned Revisional Court had considered the contentions raised on behalf of the petitioners and rightly dismissed the revision petition. Accordingly, it is argued that no ground for interference with the impugned orders, in exercise of the inherent jurisdiction under Section 482 of the Cr.P.C., is made out.

13. Heard learned counsel for the petitioners, learned Additional Public Prosecutor for the State and learned counsel appearing on behalf of Opposite Party No. 2 and have perused the materials available on record.

14. The primary issues which arise for consideration are whether the learned Magistrate was justified in taking cognizance despite the final report submitted by the investigating officer; whether the prosecution under the Arms Act suffers from non-compliance with the statutory requirement of sanction; and whether the criminal proceeding is manifestly attended with *mala fide* and has been instituted as a counterblast, thereby attracting the inherent jurisdiction of this Court under Section 482 Cr.P.C.

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15. At the outset, it is necessary to reiterate that the inherent jurisdiction under Section 482 of the Cr.P.C. is intended to prevent abuse of the process of any Court and to secure the ends of justice. Though such jurisdiction is to be exercised sparingly, the same cannot be withheld where the continuation of criminal proceedings would result in manifest injustice.

16. In the present case, it is an admitted position emerging from the materials that the investigating officer, upon completion of investigation, submitted Final Form No. 64/15 dated 31.03.2015, holding the occurrence as false and recommending prosecution of the informant under Sections 182 and 211 of the I.P.C. The informant thereafter filed a petition, upon consideration of which the learned Magistrate differed with the police report and took cognizance against the petitioners.

17. No doubt, the learned Magistrate is not bound by the opinion of the investigating officer and is competent to differ from the police report upon consideration of the materials collected during investigation. However, such power is required to be exercised upon due application of judicial mind. The mere filing of a petition on behalf of the informant/Opposite Party No. 2 for taking cognizance of offence in view of the materials

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available on record, does not, by itself, establish the truthfulness of the allegations contained therein. The materials relied upon must disclose sufficient grounds for proceeding against the accused.

18. In the present matter, the petitioners have specifically contended that the investigating agency, after examining the materials collected during investigation, had found the occurrence to be false. They have further questioned the manner in which the learned Magistrate proceeded to take cognizance, particularly in the background of the final report and the connected proceedings between the parties. The said circumstances require consideration not in isolation but cumulatively.

19. The petitioners have relied upon the connected proceedings arising out of Bakhari P.S. Case No. 232 of 2014. From the show-cause affidavit, *i.e.*, counter affidavit wrongly titled as show-cause affidavit filed on behalf of Opposite Party No. 2, it transpires that the said case was instituted against the informant in connection with the alleged possession of firearms. It is further stated that sanction was obtained from the District Magistrate, Begusarai, and a charge-sheet was submitted against Opposite Party No. 2 under Sections 25(1-B)(a)/26 of the Arms

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Act. The learned Sub-Divisional Judicial Magistrate, Begusarai, thereafter took cognizance by order dated 05.08.2016.

20. It is germane, at this stage, to delineate relevant facts which could have important bearing on the case at hand, in order to decide the issues framed hereinabove :-

i) The informant in the case at hand is Abdul Halim, who is Mukhiya of the said panchayat.

ii) Against him a Bakhri P.S. Case No. 55 of 2005 was registered on the application of District Panchayati Raj Officer, Begusarai in which after investigation charge-sheet was submitted against him and other accused persons on 22.04.2014 for the offences under Sections 420, 409, 120B and 386 of the Indian Penal Code which is evident from Annexure -2 to the present application.

iii) On the complaint of the petitioner's family with respect to the dubious conduct of fair price dealer, namely Chhotan Poddar, of the village and with the help of Abdul Halim the aforesaid fair price dealer caused the villagers to assault the enquiry team, whereupon a Bakhri P.S. Case No. 321 of 2013 under Sections 341, 323, 307 and 34 of the I.P.C. was registered against Abdul Halim, the present informant and one Badruddin.

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iv) For the said occurrence taken place on 09.12.2013, Abdul Halim lodged the instant case being Bakhri P.S. Case No. 320 of 2013. Both the cases were investigated by the police. After investigation, in the case lodged by the present informant vide Bakhri P.S. Case No. 320 of 2013, police submitted final form holding the case to be untrue.

v) In course of investigation, the investigating officer came to the conclusion that the case lodged by present informant vide Bakhri P.S. Case No. 320 of 2013 is not only false but also came to the conclusive finding that the pistol produced by the informant, which was seized by police on production, in the aforesaid Bakhri P.S. Case No. 320 of 2013, was in fact belong to the informant himself and he had planted the same to implicate the petitioners and for such mischievous act of the present informant, on the direction of Superintendent of Police, Begusarai, the police, lodged an FIR as Bakhri P.S. Case No. 232 of 2014 under Section 25 (1-B)(a)/26 of the Arms Act against the present informant, namely, Abdul Halim.

vi) After investigation finding substantial evidence against the informant, i.e., O.P. No. 2, namely Abdul Halim, the police submitted charge-sheet under

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the aforesaid sections of the Arms Act, whereupon learned Sub-Divisional Judicial Magistrate, Begusarai vide order dated 05.08.2016 took cognizance of offences under Section 25 (1-B)(a)/26 of the Arms Act and summoned the present informant to face the trial.

(vii) The learned Trial Court took cognizance of offences under the Arms Act against the present informant on the sanction for prosecution being granted by the District Magistrate, Begusarai vide Memo No. 1160 dated 21.06.2016.

(viii) The present informant thereafter assailed the order taking cognizance before this Court vide Criminal Miscellaneous No. 11048 of 2017, and after having considered the entire gamut of evidence and materials available on record, this Court vide judgment dated 13.04.2018, quashed the order dated 05.08.2016, taking cognizance of the offences against the present informant in connection with Bakhri P.S. Case No. 232 of 2014.

21. At this stage, observation recorded by this Court while allowing the application of the present informant in paragraph no. 30 of the above-mentioned judgment, assumes significance and for the sake of convenience and clarity, for deciding the case at hand, the same is reproduced hereunder:-

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> *"30. In that view of the matter, the impugned order dated 05.08.2016 passed by the learned Sub Divisional Judicial Magistrate, Begusarai in Bakhri P.S. Case No.232 of 2014 is set aside. However, in view of the law laid down by the Supreme Court in* ***Amitbhal Anilchandra Shah*** *(supra), the charge-sheet No.106 of 2016 filed in Bakhri P.S. Case No.232 of 2014 shall be treated as further report in Bakhri P.S. Case No.320 of 2013 and the investigation carried out in that case would also be treated as the further investigation of Bakhari P.S. Case No.320 of 2013. The entire record of Bakhri P.S.Case No.232 of 2014 will form part of the record of Bakhri P.S. Case No.320 of 2013. The learned Magistrate before whom Bakhri P.S. Case No.320 of 2013 is pending shall consider the charge-sheet submitted in Bakhri P.S. Case No.232 of 2014 as further report in Bakhri P.S. Case No.320 of 2013 in terms of Sub Section (8) of Section 173 of the Cr.P.C. and pass appropriate orders in accordance with law."*

22. Thus from the findings recorded by this Court in the aforesaid Criminal Miscellaneous *(supra)*, it becomes manifestly evident that for the recovery of the same pistol two FIRs were lodged, *i.e.*,

i) the present case arising out of Bakhri P.S. Case No. 320 of 2013 in which Abdul Halim is the informant and;

ii) Bakhri P.S. Case No. 232 of 2014 lodged by the police in which the present informant, *viz.*, Abdul Halim was an accused.

23. The present case arising out of Bakhri P.S. Case No. 320 of 2013, which after investigation, was found to be

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patently false and the Bakhri P.S. Case No. 232 of 2014 was found to be true in which under Section 25(1-B)(a) and 26 of the Arms Act, order taking cognizance by the learned Magistrate, after due sanction granted by the concerned District Magistrate, has been quashed by this Court *vide* order dated 13.04.2018 passed in Criminal Miscellaneous No. 11048 of 2017.

24. While disposing the aforesaid criminal miscellaneous setting aside the order taking cognizance in connection with Bakhri P.S. Case No. 232 of 2014, this Court has categorically and unequivocally held that the entire case record of Bakhri P.S. Case No. 232 of 2014 will form part of the record of Bakhri P.S. Case No. 320 of 2013 and the learned Magistrate before whom Bakhri P.S. Case No.320 of 2013 is pending, shall consider the charge-sheet submitted in Bakhri P.S. Case No.232 of 2014 as further report in connection with Bakhri P.S. Case No.320 of 2013 in terms of Sub-Section (8) of Section 173 of the Cr.P.C. and thereafter will pass appropriate orders in accordance with law.

25. If the order of this Court *(supra)* is considered keeping side by side the materials available on record in the case at hand, then it does not leave any doubt that present case is also fit to be quashed, wherein accusation against the petitioners

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were found to be false in absence of any cogent and credible evidence supporting the prosecution case, connecting the petitioners to the alleged crime.

26. The petitioners have also raised a specific objection concerning the absence of previous sanction under Section 39 of the Arms Act. The said provision stipulates that no prosecution shall be instituted in respect of an offence under Section 3 of the Act without the previous sanction of the District Magistrate. The requirement is statutory in nature and cannot be dispensed with, where the provision is attracted.

27. The learned Revisional Court, while considering the aforesaid objection, observed that the question of sanction could be raised by the petitioners at the stage of hearing for framing of charge. However, where a statutory bar to prosecution is demonstrated from the materials on record, the same cannot be treated as an inconsequential objection or invariably postponed without examining its legal effect. The applicability of Section 39 of the Arms Act has to be considered with reference to the precise offence alleged and the relevant sanction record.

28. The aforesaid circumstances assume significance in view of the rival allegations concerning the

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institution of the criminal proceedings. The petitioners have consistently asserted that the informant has initiated the present proceeding with an ulterior motive arising out of the previous disputes between the parties. The existence of connected proceedings, the allegations made therein and the manner in which the two cases have proceeded, are relevant circumstances for examining the plea of *mala fide*.

29. In this context, reliance has been placed upon the judgment of the Hon'ble Supreme Court in ***State of Haryana Vs. Bhajan Lal***, reported in ***1992 Supp (1) SCC 335***, wherein the Apex Court laid down illustrative categories of cases in which the inherent jurisdiction of the High Court may be exercised to prevent abuse of the process of the Court or otherwise to secure the ends of justice which as follows :-

> *"**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*

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> *should be exercised.*
>
> *…….*
>
> ***(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.*
>
> *…….*
>
> ***(7)*** *Where a criminal proceeding is manifestly attended with malafide 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."*

30. The aforesaid principle was further applied by the Hon'ble Supreme Court in ***Eicher Tractor Ltd. Vs. Harihar Singh***, reported in ***(2008) 16 SCC 763***, wherein the proceedings were quashed upon finding that the same had been initiated as a counterblast to the proceedings instituted by the appellants. The Hon'ble Supreme Court held that :-

> *"14. The case at hand squarely falls within the parameters indicated in Category (7) of Bhajan Lal case [1992 Supp (1) SCC 335 : 1992 SCC (Cri) 426] . The factual scenario as noted above clearly shows that the proceedings were initiated as a counterblast to the proceedings initiated by the appellants. Continuance of such proceedings will be nothing but an abuse of the process of law. Proceedings are accordingly quashed."*

31. The principle emerging from the aforesaid decisions is that although the existence of previous disputes between the parties, by itself, is not sufficient to quash a criminal proceeding, the Court is required to examine whether

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the prosecution, viewed in its entirety, is a genuine invocation of criminal law or has been initiated with an ulterior motive to wreak vengeance upon the accused.

32. Applying the aforesaid principles to the facts of the present case, it is noticed that the petitioners have raised a specific plea of counterblast and *mala fide*. The investigation in Bakhari P.S. Case No. 320 of 2013 culminated in submission of a final report treating the occurrence as false. The subsequent proceedings arising out of Bakhari P.S. Case No. 232 of 2014 also disclose a connected dispute concerning the alleged possession of firearms and the informant herein. The order passed by this Court in Cr. Misc. No. 11048 of 2017 further indicates that the proceedings arising out of the latter case were required to be considered as further material in the former case.

33. Thus, the two proceedings cannot be viewed in complete isolation from each other. The circumstances surrounding their institution and the subsequent developments are required to be considered together. The petitioners' plea is not founded merely upon the existence of a previous dispute but upon the cumulative effect of the police report, the connected criminal proceedings and the allegations of retaliatory action between the parties.

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34. It is true that the learned Magistrate is empowered to differ from the final report and takes cognizance on the basis of the materials available on record. However, such power cannot be exercised mechanically or in disregard of circumstances which have a direct bearing upon the *bona fides* of the prosecution. The Court must also guard against the possibility of criminal proceedings being employed as an instrument of personal vengeance.

35. In the present case, the final report submitted by the investigating officer, the connected proceedings arising out of Bakhari P.S. Case No. 232 of 2014, the subsequent order passed by this Court in Cr. Misc. No. 11048 of 2017 and the specific objection concerning sanction under the Arms Act, when considered cumulatively, raise substantial doubt regarding the *bona fides* of the prosecution and its continuation against the petitioners.

36. The Revisional Court, while dismissing Criminal Revision No. 520 of 2015, primarily proceeded on the basis that a *prima facie* case was disclosed and that the objection regarding sanction could be raised at the stage of framing of charge. However, the revisional order does not adequately address the cumulative effect of the circumstances

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relied upon by the petitioners, particularly the allegation of retaliatory prosecution and the subsequent developments in the connected criminal proceedings.

37. In the considered opinion of this Court, the inherent jurisdiction under Section 482 Cr.P.C. is not intended to be exercised merely because an accused disputes the allegations made against him. However, where the materials placed before the Court, taken together, indicate that continuation of the prosecution would amount to an abuse of the process of law, interference becomes necessary to secure the ends of justice.

38. In view of the principles laid down by the Hon'ble Supreme Court in ***State of Haryana Vs. Bhajan Lal*** *(supra)*, particularly Categories (3 & 7), and the decision in ***Eicher Tractor Ltd. Vs. Harihar Singh*** *(supra)*, this Court finds that the circumstances of the present case warrant exercise of inherent jurisdiction to prevent abuse of the process of the Court.

39. *Ex-consequenti*, the order dated 28.10.2015 passed by the learned Judicial Magistrate, 1st Class, Begusarai, in G.R. Case No. 5420 of 2013, arising out of Bakhari P.S. Case No. 320 of 2013 whereby cognizance had been taken against the petitioners for the offences punishable under Sections 143, 341,

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323, 504 and 379 of the I.P.C. and Sections 25(1-B)(a)/26 of the Arms Act, as well as the order dated 21.03.2017 passed by the learned Additional Sessions Judge-I, Begusarai, in Criminal Revision No. 520 of 2015, are, hereby, quashed and set aside *qua* the petitioners.

40. All the criminal proceedings emanating from Bakhari P.S. Case No. 320 of 2013, insofar as they relate to the present petitioners, also stands quashed and set aside.

41. Accordingly, the present application stands allowed.

42. All Interlocutory application(s), if any, also stands disposed off accordingly.

(Rana Vikram Singh, J)

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AFR/NAFR	NAFR
CAV DATE	14-08-2026
Uploading Date	10.11.2026
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