

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.34150 of 2013

Arising Out of PS.Case No. -435 Year- 2013 Thana -KOTWALI District- PATNA

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1. Praveen Kumar S/O Late Ram Ballabh Sharma Resident Of Village & P.O.- R. Mahasaura, P.S.- Ramgarh Chowk, Dist.- Lakhisarai, Presently Practicing As Advocate, Wadhwa Chamber, Patna High Court.

.... Petitioner/s

Versus

1. The State Of Bihar
2. Sri Jai Prakash Singh S/O Sri Narendra Pd. Singh Resident Of Mohalla-Gandhi Nagar, Danapur, Dist.- Patna, At Present P.P., Patna Civil Court, And Member Of Bihar State Bar Council, Patna

.... Opposite Party/s

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with

Criminal Miscellaneous No.28593 of 2016

Arising Out of PS.Case No. -659 Year- 2013 Thana -KOTWALI District- PATNA

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1. Jai Prakash Singh Son of Sri Narendra Prasad Singh Resident of Moh-Gandhinagar, Danapur, P.S. Danapur, district Patna.

.... Petitioner/s

Versus

1. The State of Bihar
2. Praveen Kumar, Advocate Son of late Ram Ballabh Sharma Resident of Village & P.O. Mahsaur,P.S. Ramgarh Chowk, District Lakhisarai.

.... Opposite Party/s

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Appearance :

(In Cr.Misc. No.34150 of 2013)

For the Petitioner : Mr. Sanjeev Kumar

For the Opposite Party no.2 : Mr. Sunil Kumar

For the State : Ms. Sharda Kumari

(In Cr.Misc. No.28593 of 2016)

For the Petitioner :

For the Opposite Party NO.2 : M/s. Sanjeev Kumar and Sunil Kumar

For the State : Mr.Nand Kumar

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI
ORAL ORDER

11 26-04-2017

Heard learned counsel for the petitioners of both the petitions who happen to be corresponding opposite party as well as learned A.P.P.

2. Unfortunately the parties are coming from legal fraternity being advocates and from perusal of both the FIRs, it is



evident that on account of some sort of dispute relating to their internal matter, they became aggrieved with each other activities, as a result of which, both the cases cropped up putting accusation against each other. In such situation, identifying status of the parties as well as nature of relief so sought for, both the petitions have been heard together and are being disposed of by a common order.

3. In Cr. Misc. No. 34150 of 2013, a prayer has been made for quashing of First Information Report relating to Kotwali P.S.Case No. 435 of 2013 u/s 323, 341, 307,504, 506, 34 of the Indian Penal Code wherein the informant, Jai Prakash Singh, had alleged that during course of hearing of a petition of Prem Kumar Jha, before the Election Tribunal, on 26.07.2013 petitioner-Praveen Kumar used unparliamentarily words against the members and for that, the informant has requested Praveen Kumar to withdraw the words, which he declined, as a result of which the informant directed that he will be prosecuted under disciplinary rules whereupon Praveen Kumar assaulted and pressed his neck. The other members rescued him. Praveen Kumar left the Hall after using defamatory words.

4. In Cr. Misc. No.28593 of 2016, a prayer has been made for quashing of the First Information Report relating to



Kotwali P.S.Case No. 659 of 2013 registered u/s 323, 342, 352, 504, 500,307, 120(B) of the Indian Penal Code which has been registered on the basis of a complaint petition, on an order passed u/s 156(3) Cr.P.C filed by Praveen Kumar against the petitioner and Prem Kumar Jha for the offences committed on 26.07.2013 wherein it has been alleged that as soon as hearing of election petition was over, Jai Prakash Singh uttered filthy language against him and on protest he was assaulted with fists and slaps. It has also been alleged that petitioner ordered Prem Kumar Jha to close the door of meeting hall facilitating confinement of complainant and during said course, the complainant was again assaulted.

5. Basically, in the background of compromise having been effected amongst the parties and further nature of dispute as has been alleged by both the parties along with the fact that both parties belong to legal fraternity and further they have resolved the disputes. Now learned counsel for both parties have requested that FIR of both the cases may be quashed and to substantiate them, learned counsel has placed reliance upon a judgment of Supreme Court in the case of ***Central Bureau of Investigation v. Sadhu Ram Singla & ors***, as reported in ***2017(2)PLJR 124(SC)*** wherein on the basis of compromise



having been effected amongst the parties, FIRs which were quashed at an earlier occasion was confirmed dismissing the appeal on behalf of CBI.

6. For better appreciation, it is desirable to quote relevant paragraphs of the aforesaid judgment:

“9. Learned Additional Solicitor General appearing for the CBI has drawn our attention to the decision of this Court in Manoj Sharma Vs. State & Ors.,(2008) 16 SCC 1, wherein it was observed by this Court:

“22. Since Section 320 CrPC has clearly stated which offences are compoundable and which are not, the High Court or even this Court would not ordinarily be justified in doing something indirectly which could not be done directly. Even otherwise, it ordinarily would not be a legitimate exercise of judicial power under Article 226 of the Constitution or under Section 482 CrPC to direct doing something which CrPC has expressly prohibited. Section 320(9) CrPC expressly states that no offence shall be compounded except as provided by that Section. Hence, in my opinion, it would ordinarily not be a legitimate exercise of judicial power to direct compounding of a non-compoundable offence.”

10. We further wish to supply emphasis on the judgment delivered by this Court in the case of State of Tamil Nadu Vs. R. Vasanthi Stanley & Anr., (2016) 1 SCC 376, wherein it was observed:

“15. As far as the load on the criminal justice dispensation system is concerned it has an insegregable nexus with speedy trial. A grave criminal offence or serious economic offence or for that matter the offence that has the potentiality to create a dent in the financial



health of the institutions, is not to be quashed on the ground that there is delay in trial or the principle that when the matter has been settled it should be quashed to avoid the load on the system. That can never be an acceptable principle or parameter, for that would amount to destroying the stem cells of law and order in many a realm and further strengthen the marrows of the unscrupulous litigations. Such a situation should never be conceived of.”

11. Further reliance was placed on the decision of this Court in the case of Central Bureau of Investigation Vs. A. Ravishankar Prasad & Ors., (2009) 6 SCC 351, wherein it was held:

“39. Careful analysis of all these judgments clearly reveals that the exercise of inherent powers would entirely depend on the facts and circumstances of each case. The object of incorporating inherent powers in the Code is to prevent abuse of the process of the court or to secure ends of justice.”

12. Lastly, reliance was placed upon another judgment of this Court in Central Bureau of Investigation Vs. Maninder Singh, (2016) 1 SCC 389, wherein it was held by this Court:

“19. In this case, the High Court while exercising its inherent power ignored all the facts viz. the impact of the offence, the use of the State machinery to keep the matter pending for so many years coupled with the fraudulent conduct of the respondent. Considering the facts and circumstances of the case at hand in the light of the decision in Vikram Anantrai Doshi case, (2014) 15 SCC 29, the order of the High Court cannot be sustained.”

13. Resisting the aforesaid submissions it was canvassed by Mr. Bishwajit Bhattacharya, learned senior counsel appearing for the respondents that High Court has judiciously and rightly considered the facts and



circumstances of the present case. Relying upon the judgment of this Court in *Gian Singh Vs. State of Punjab & Anr.*, (2012) 10 SCC 303, learned senior counsel appearing for the respondents strenuously urged that the offences in the present case are not heinous offences. He further drew our attention towards the relevant part of Full Bench judgment of the High Court in *Kulwinder Singh & Ors. Vs. State of Punjab & Anr.* which was reproduced in the impugned judgment and the same is reproduced hereunder:

“26. In *Mrs. Shakuntala Sawhney v. Mrs. Kaushalya Sawhney & Ors.*, (1980) 1 SCC 63, Hon'ble Krishna Iyer, J. aptly summed up the essence of compromise in the following words :-

The finest hour of justice arrives propitiously when parties, despite falling apart, bury the hatchet and weave a sense of fellowship or reunion.

27. The power to do complete justice is the very essence of every judicial justice dispensation system. It cannot be diluted by distorted perceptions

and is not a slave to anything; except to the caution and circumspection, the standards of which the Court sets before it, in exercise of such plenary and unfettered power inherently vested in it while donning the cloak of compassion to achieve the ends of justice. No embargo, be in the shape of Section 320(9) of the Cr.P.C. or any other such curtailment, can whittle down the power under Section 482 of the Cr.P.C.”

14. Since the present case pertains to the crucial doctrine of judicial restraint, we are of the considered opinion that encroaching into the right of the other organ of the government would tantamount clear violation of the rule of law which is one of the basic structure of the Constitution of India. We wish to supply



emphasis on para 21 of the Manoj Sharma's case (supra) which is as follows:

“21. Ordinarily, we would have agreed with Mr. B.B. Singh. The doctrine of judicial restraint which has been emphasised repeatedly by this Court e.g. in Aravali Golf Club v. Chander Hass (2008) 1 SCC 683 and Govt. of A.P. v. P. Laxmi Devi (2008) 4 SCC 720, restricts the power of the Court and does not permit the Court to ordinarily encroach into the legislative or executive domain. As observed by this Court in the above decisions, there is a broad separation of powers in the Constitution and it would not be proper for one organ of the State to encroach into the domain of another organ.”

15. Having carefully considered the singular facts and circumstances of the present case, and also the law relating to the continuance of criminal cases where the complainant and the accused had settled their differences and had arrived at an amicable arrangement, we see no reason to differ with the view taken in Manoj Sharma's case (supra) and several decisions of this Court delivered thereafter with respect to the doctrine of judicial restraint. In concluding hereinabove, we are not unmindful of the view recorded in the decisions cited at the Bar that depending on the attendant facts, continuance of the criminal proceedings, after a compromise has been arrived at between the complainant and the accused, would amount to abuse of process of Court and an exercise in futility since the trial would be prolonged and ultimately, it may end in a decision which may be of no consequence to any of the parties.

7. That being so, the dispute being amongst individual and further in consonance of settled principle of law, as referred herein above, FIRs of both two cases that means to say



that Kotwali P.S.Case no. 435 of 2013 and Kotwali P.S.Case No. 659 of 2013 are hereby quashed, so far petitioners are concerned.

8. Both these two applications are allowed.

(Aditya Kumar Trivedi, J)

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