

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.19737 of 2014

Arising Out of PS.Case No. -198 Year- 2013 Thana -DUMRAUN District- BUXAR

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1. Abhijeet Gupta @ Abhijeet @ Abhijeet Kumar, Son of Dilip Sah.
2. Alok Gupta @ Indrajeet @ Indrajeet Kumar, Son of Dilip Sah, All Resident of Village - Old Bhojpur, P.S.- Dumraon, District – Buxar.

.... Petitioner/s

Versus

1. The State of Bihar
2. Pradeep Kumar Gupta (Sah), Son of Paras Nath Sah, Resident of Village - Old Bhojpur, P.S.- Duraon, District –Buxar.

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Parijat Saurav, Advocate.
For the O.P. No. 2 : Mr. Anil Kumar Roy, Advocate.
For the State : Mr. Dashrath Mehta, APP

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CORAM: HONOURABLE MR. JUSTICE RAJENDRA KUMAR MISHRA
ORAL JUDGMENT
Date: 18-12-2017

Heard learned counsel for the petitioners,
learned counsel for the complainant-informant-opposite party no.2
and the learned counsel for the State.

2. This application, under Section 482 of the Code of Criminal Procedure, is directed against the order dated 23.01.2014 passed in Dumraon (New Bhojpur) P.S. Case No. 198 of 2013/ G.R. No. 2144 of 2013, whereunder the learned Chief Judicial Magistrate, Buxar, took the cognizance for the offence under Sections 147, 323, 452 and 379 of the Indian Penal Code against the petitioners and four others named in the F.I.R.



3. The facts leading to this application is that complainant-informant-opposite party no. 2, Pradeep Kumar Gupta, filed Complaint Case No. 635 of 2013 against the petitioners and four others, namely, Ashok Sah, Delip Sah, Indu Devi and Gudia Devi to the effect that when he was sleeping at his house then six persons named in the complainant petition including the petitioners having lath and danda entered in his house. At that time, Ashok Sah and Dilip Sah started to cause assault with intention to kill him, in which, he sustained injury. On raising alarm by him, the witnesses reached there and tried to save him. At that time, his daughter Babita Devi sustained injury. Thereafter, they took cash of Rs.30,000/- kept in the almirah on taking the key of almirah by Ashok Sah. Dilip Sah also snatched ornaments worth of Rs.60,000/- of his daughter, Babita Devi and due to pelting bricks she also sustained injury.

The aforesaid complainant case was sent under Section 156 (3) Cr.P.C. for investigation and on that very basis Dumraon (New Bhojpur) P.S. Case No. 198 of 2013 was instituted on 19.09.2013 under Sections 452, 323, 147 and 379 of the Indian penal Code. On investigation, the police submitted the final form against the petitioners finding the case untrue while submitted the charge sheet against the rest four accused under



sections 147, 323, 452 and 379 of the Indian Penal Code. Thereafter, the learned Chief Judicial Magistrate, Buxar, on perusal of the material available in the case diary, took cognizance of the offence under 147, 323, 452 and 379 of the Indian Penal Code against six all accused persons named in the complaint petition/F.I.R. including the petitioners deferring with the final form submitted against the petitioners on 23.01.2014.

4. Learned counsel for the petitioners submits that petitioners are nephew of the complainant-informant-opposite party no. 2 whereas Ashok Sah, Dilip Sah, Indu Devi and Guddi Devi are own brothers and sister-in-laws of the complainant-informant-opposite party no. 2 and due to family dispute the complainant-informant filed the Complaint Case No. 635 (C) of 2013 under Section 156 (3) Cr.P.C. in the court of Chief Judicial Magistrate, Buxar and on that very basis Dumraon (New Bhojpur) P.S. Case No. 198 of 2013 was instituted on 19.09.2013. Now the good feelings have been restored in between six persons named in the complainant petition/First Information Report including the petitioners and the complainant-informant-opposite party no. 2, complainant-informant-opposite party no. 2 has filed the counter affidavit today in this court stating the said facts. It is further submitted that all the offences are compoundable under Section



320 of the Code of Criminal Procedure except Sections 147 and 452 of the Indian Penal Code. All accused named in the complaint petition including the petitioners are agnates of the informant-opposite party no. 2 and settled the dispute and both parties do not want to proceed with the case. The offence under Sections 147, 323, 452 and 379 of the Indian Penal Code are not heinous and have serious impact against the society, therefore, impugned order and further criminal proceeding in Dumraon (New Bhojpur) P.S. Case No. 198 of 2013/ G.R. No. 2144 of 2013 may be quashed. In this context, learned counsel for the petitioners has placed reliance on the decision in a case of Gian Singh Versus State of Punjab and Another, reported in (2012)10 Supreme Court Cases 303.

5. Learned counsel for the complainant-informant-opposite party no. 2 also submits that the complainant-informant-opposite party no. 2 is the agnate of six persons named in the complaint petition-F.I.R. including the petitioners and now the good feelings have been restored. He has no objection in allowing the present case by quashing the order dated 23.01.2014 passed in Trial No. 2366 of 2014/G.R. No. 2144 of 2013 arising out Dumraon (New Bhojpur) P.S. Case No. 198 of 2013.

6. In Gian Singh case (Supra), the observation of



the Hon'ble Apex Court in paragraph 61 is quoted as under:

The position that emerges from the above discussion can be summarised thus: the power of the High Court in quashing a criminal proceeding or FIR or complaint in exercise of its inherent jurisdiction is distinct and different from the power given to a criminal court for compounding the offences under [Section 320](#) of the Code. Inherent power is of wide plenitude with no statutory limitation but it has to be exercised in accord with the guideline engrafted in such power viz; (i) to secure the ends of justice or (ii) to prevent abuse of the process of any Court. In what cases power to quash the criminal proceeding or complaint or F.I.R may be exercised where the offender and victim have settled their dispute would depend on the facts and circumstances of each case and no category can be prescribed. However, before exercise of such power, the High Court must have due regard to the nature and gravity of the crime. Heinous and serious offences of mental depravity or offences like murder, rape, dacoity, etc. cannot be fittingly quashed even though the victim or victim's family and the offender have settled the dispute. Such offences are not private in nature and have serious impact on society. Similarly, any compromise between the victim and



offender in relation to the offences under special statutes like [Prevention of Corruption Act](#) or the offences committed by public servants while working in that capacity etc; cannot provide for any basis for quashing criminal proceedings involving such offences. But the criminal cases having overwhelmingly and pre-dominantly civil flavour stand on different footing for the purposes of quashing, particularly the offences arising from commercial, financial, mercantile, civil, partnership or such like transactions or the offences arising out of matrimony relating to dowry, etc. or the family disputes where the wrong is basically private or personal in nature and the parties have resolved their entire dispute. In this category of cases, High Court may quash criminal proceedings if in its view, because of the compromise between the offender and victim, the possibility of conviction is remote and bleak and continuation of criminal case would put accused to great oppression and prejudice and extreme injustice would be caused to him by not quashing the criminal case despite full and complete settlement and compromise with the victim. In other words, the High Court must consider whether it would be unfair or contrary to the interest of justice to continue with the criminal proceeding or continuation of the



criminal proceeding would tantamount to abuse of process of law despite settlement and compromise between the victim and wrongdoer and whether to secure the ends of justice, it is appropriate that criminal case is put to an end and if the answer to the above question(s) is in affirmative, the High Court shall be well within its jurisdiction to quash the criminal proceeding.

7. On perusal of the complaint petition and also admitted by both parties, the complainant-informant-opposite party no. 2 is the agnate of six accused named in the F.I.R. including the petitioners. The allegation is of entering in the house of the complainant-informant-opposite party no.2 and causing assault to him by the six persons named in the F.I.R. including the petitioners and also taking the cash to the Almirah and snatching the ornaments. All the offences except the offence under Sections 147 and 452 are compoundable under Section 320 Cr.P.C. and the offences are not heinous showing extreme depravity against the society and parties who are agnates have also settled their dispute. Under such circumstances, continuance of criminal proceeding on taking the cognizance of offence under Section 147, 323, 452 and 379 of the Indian Penal code through the impugned order in Dumraon (New Bhojpur) P.S. Case No. 198 of 2013 would



amount to abuse of process of the court.

8. In the result, the order dated 23.01.2014 passed in Complaint Case No. 635 of 2013 which is the basis of FIR of Dumraon (New Bhojpur) P.S. Case No. 198 of 2013 is hereby quashed and this application is allowed.

(Rajendra Kumar Mishra, J)

Bhardwaj/-

AFR/NAFR	
CAV DATE	
Uploading Date	05.01.2018
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