

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.26711 of 2014

Arising Out of PS.Case No. -960 Year- 2013 Thana -BHAGALPUR COMPLAINT CASE District-
BHAGALPUR

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Gautam Kumar Mishra son of Suresh Kumar Mishra resident of village - Laluchak, Police Station - Lodipur, District - Bhagalpur, At present residing at Priti Niwas, A-34/B, Gayati Nagar, Raipur (Chhatisgarh), Police Station - Raipur Chhatisgarh, Pin Code 492001.

.... Petitioner/s

Versus

1. The State of Bihar.
2. Manoj Kumar Mishra son of Suresh Kumar Mishra Resident of village - Laluchak, Police Station - Lodipur, District - Bhagalpur, At present residing at 7th Floor, Binay Shanti Priti Apartment, Kanke Road, Ranchi, Police Station - Gonda, Ranchi (Jharkhand).

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr.Sanjay Kumar, Adv.

For the Opposite Party No.2 : Mr. Priyank Deepak, Adv.

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CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH

ORAL JUDGMENT

Date: 09-08-2017

In the present application, challenge has been made by the petitioner to the order dated 17.05.2014 passed by Shri Anwar Shamim, Judicial Magistrate, Bhagalpur in Complaint Case No. 960 of 2013 by which the learned trial court has taken cognizance against the petitioner and others for the offences punishable under Sections 420, 467, 468 and 120B of the Indian Penal Code.

2. The Opposite Party No.2 herein, namely, Manoj Kumar Mishra, has filed a Complaint case No. 960 of 2013 on 14.05.2013 before the learned Chief Judicial Magistrate, Bhagalpur, against the petitioner herein and one another person. It has been alleged in the complaint that the complainant is worshiper of 108 Thakur Radha



Krishna Ji Maharaj and also a family member of founder, namely, late Hari Mohan Mishra, who had established the idol in the ancestral house of the complainant at village Laluchak in the year 1938 and the said founder had dedicated considerable moveable property and jewelleryes and endowed considerable immovable properties for the expenses and upkeep of the said temple. However, both the accused persons under criminal conspiracy made a registered deed of sale bearing No. 4611 dated 29.03.2012 with a view to defraud the members of family as well as worshipers and deity. It has been stated in the complaint petition that the land of village Lodipur, thana no. 124 bearing khata no.156, khesra no. 307, admeasuring 3 acre 4 decimals is in the name of Shree Shree 108 Radha Krishna Jee Maharaj, Sebait of said trust. It has been stated that the said Shree Shree 108 Radha Krishna Jee Maharaj belongs to the deity of the family of late Hari Mohan Mishra, whereafter his son Radha Krishna Mishra was appointed as the sebait and the complainant is relative as well as entitled to worship the deity. It has been stated in the complaint that none of the family members of late Hari Mohan Mishra have the right to sell the aforesaid land, hence, the transfer made by both the accused persons is illegal and has been done with a view to misappropriate money.

3. The learned Judicial Magistrate, Ist Class, Bhagalpur by



an order dated 17.05.2014 has taken cognizance of the offence punishable under Sections 420, 467, 468 and 120B of the Indian Penal Code against the petitioner as well as other accused persons.

4. The learned counsel for the petitioner submits that the present case is purely a case of civil nature, there is no allegation of forging any document, no case of cheating is made out and, therefore, a bare reading of the complaint would show that no case for the offence punishable under Sections 420, 467, 468 and 120B of the Indian Penal Code is made out.

5. The learned counsel for the petitioner has relied upon the judgment of the Hon'ble Supreme Court, reported in *AIR 2006 SC 2780* [**M/S Indian Oil Corporation v. M/S NEPC India Ltd. and Ors.**], *2015 AIR SCW 3027* [**Mehmood UL Rehman v. Khazir Mohammad Tunda and Ors.**] and on a judgment of this Court, reported in *1999(2) PLJR (HC) 540* [**Jamil Akhtar Javed Mohd. Ali Chand Mohd. Shah Alam vs. The State of Bihar and Anr.**].

6. The learned counsel for the opposite Party No.2 has vehemently opposed the prayer of the petitioner for quashing the criminal proceedings, though it has been admitted that the allegations levelled in the complaint petition are purely civil in nature and constitutes a civil dispute.

7. I have perused the materials on records and considered



the arguments advanced on behalf of the parties.

8. A bare perusal of the complaint filed by the Opposite Party No.2 would show that the allegations levelled therein are with regard to dispute about the transfer of land by means of sale deed by the accused persons, which is purely a civil dispute and the remedy lies before the civil court of competent jurisdiction. I further find that there is no allegation of forging of any document much less of dishonestly inducing the Opposite Party No.2 or for that matter any other person deceived to deliver any property to any person or to make, alter or destroy the whole or any part of a valuable security, or anything which is signed or sealed, and which is capable of being converted into a valuable security.

9. I further find that none of the allegations levelled in the complaint even, if they are taken on their face value and accepted in their entirety, constitute any prima facie offence nor discloses commission of cognizable offence as against the petitioner.

10. The instant case definitely falls under Clause (1) to (3) of paragraph 102 of the judgment of the Hon'ble Apex Court reported in *1992 Supp (1) SCC 335 (State of Haryana v. Bhajan Lal)*.

In Indian Oil Corporation v. M/S NEPC India Ltd. and Ors. (supra) the Hon'ble Supreme Court, in paragraphs- 9 & 10, has held as follows:-



"9. The principles relating to exercise of jurisdiction under Section 482 of the Code of Criminal Procedure to quash complaints and criminal proceedings have been stated and reiterated by this Court in several decisions. To mention a few - Madhavrao Jiwaji Rao Scindia v. Sambhajirao Chandrojirao Angre [1988 (1) SCC 692], State of Haryana v. Bhajanlal [1992 Supp (1) SCC 335], Rupan Deol Bajaj v. Kanwar Pal Singh Gill [1995 (6) SCC 194], Central Bureau of Investigation v. Duncans Agro Industries Ltd., [1996 (5) SCC 591], State of Bihar v. Rajendra Agrawalla [1996 (8) SCC 164], Rajesh Bajaj v. State NCT of Delhi, [1999 (3) SCC 259], Medchl Chemicals and Pharma (P) Ltd. v. Biological E. Ltd. [2000 (3) SCC 269], Hridaya Ranjan Prasad Verma v. State of Bihar [2000 (4) SCC 168], M. Krishnan v. Vijay Kumar [2001 (8) SCC 645], and Zandu Pharmaceutical Works Ltd. v. Mohd. Sharaful Haque [2005 (1) SCC 122]. The principles, relevant to our purpose are :

(i) A complaint can be quashed where the allegations made in 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 the case alleged against the accused.

For this purpose, the complaint has to be examined as a whole, but without examining the merits of the allegations. Neither a detailed inquiry nor a meticulous analysis of the material nor an assessment of the reliability or genuineness of the allegations in the complaint, is warranted while examining prayer for quashing of a complaint.

(ii) A complaint may also be quashed where it is a clear abuse of the process of the court, as when the criminal proceeding is found to have been initiated with mala fides/malice for wreaking vengeance or to



cause harm, or where the allegations are absurd and inherently improbable.

(iii) The power to quash shall not,

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however, be used to stifle or scuttle a legitimate prosecution. The power should be used sparingly and with abundant caution.

(iv) The complaint is not required to verbatim reproduce the legal ingredients of the offence alleged. If the necessary factual foundation is laid in the complaint, merely on the ground that a few ingredients have not been stated in detail, the proceedings should not be quashed. Quashing of the complaint is warranted only where the complaint is so bereft of even the basic facts which are absolutely necessary for making out the offence.

(v) A given set of facts may make out: (a) purely a civil wrong; or (b) purely a criminal offence; or (c) a civil wrong as also a criminal offence. A commercial transaction or a contractual dispute, apart from furnishing a cause of action for seeking remedy in civil law, may also involve a criminal offence. As the nature and scope of a civil proceedings are different from a criminal proceeding, the mere fact that the complaint relates to a commercial transaction or breach of contract, for which a civil remedy is available or has been availed, is not by itself a ground to quash the criminal proceedings. The test is whether the allegations in the complaint disclose a criminal offence or not.

10. While on this issue, it is necessary to take notice of a growing tendency in business circles to convert



purely civil disputes into criminal cases. This is obviously on account of a prevalent impression that civil law remedies are time consuming and do not adequately protect the interests of lenders/creditors. Such a tendency is seen in several family disputes also, leading to irretrievable break down of marriages/families. There is also an impression that if a person could somehow be entangled in a criminal prosecution, there is a likelihood of imminent settlement. Any effort to settle civil disputes and claims, which do not involve any criminal offence, by applying pressure through criminal prosecution should be deprecated and discouraged. In *G. Sagar Suri v. State of U. P.* [2000 (2) SCC 636], this Court observed:

"It is to be seen if a matter, which is essentially of civil nature, has been given a cloak of criminal offence. Criminal proceedings are not a short cut of other remedies available in law. Before issuing process a criminal court has to exercise a great deal of caution. For the accused it is a serious matter. This Court has laid certain principles on the basis of which High Court is to exercise its jurisdiction under Section 482 of the Code. Jurisdiction under this Section has to be exercised to prevent abuse of the process of any court or otherwise to secure the ends of justice."

While no one with a legitimate cause or grievance should be prevented from seeking remedies available in criminal law, a complainant who initiates or persists with a prosecution, being fully aware that the criminal proceedings are unwarranted and his remedy lies only in civil law, should himself be made accountable, at the end of such misconceived criminal proceedings, in accordance with law. One positive step that can be taken by the courts, to curb unnecessary prosecutions and harassment of innocent parties, is to exercise their power under section 250 Cr.P.C. more frequently, where they discern malice or



frivolousness or ulterior motives on the part of the complainant. Be that as it may”.

11. Another aspect of the matter is that the impugned order dated 17.05.2014 passed by the learned Judicial Magistrate, Bhagalpur has been passed in a casual, mechanical and a perfunctory manner as well as the same does not reflect that the learned Judicial Magistrate has applied his mind to the facts and the law applicable thereto.

12. In this regard it may be useful to quote relevant paragraphs i.e. 8 to 16, 18 and 24 of the judgment rendered by the Hon'ble Supreme Court in the case of **Mehmood UL Rehman v. Khazir Mohammad Tunda and Ors.** (Supra), which are as follow:

"8. In Pepsi Foods Limited and another v. Special Judicial Magistrate and others,¹ this Court has held that exercise under Section 204 of Cr.P.C. of summoning an accused in a criminal case is a serious matter and that the process of criminal law cannot be set into motion in a mechanical manner. It was also held that the order of the Magistrate summoning the accused must reflect that he has applied his mind to the facts of the case and the law governing the issue. To quote :

(1998) 5 SCC 749: (AIR 1998 SC 128).

"28. Summoning of an accused in a criminal case is a serious matter. Criminal law cannot be set into motion as a matter of course. It is not that the complainant has to bring only two witnesses to support his allegations in the complaint to have the criminal law set into motion. The order of the Magistrate summoning the accused must reflect that he has applied his mind to the facts of the case



and the law applicable thereto. He has to examine the nature of allegations made in the complaint and the evidence both oral and documentary in support thereof and would that be sufficient for the complainant to succeed in bringing charge home to the accused. It is not that the Magistrate is a silent spectator at the time of recording of preliminary evidence before summoning of the accused. The Magistrate has to carefully scrutinise the evidence brought on record and may even himself put questions to the complainant and his witnesses to elicit answers to find out the truthfulness of the allegations or otherwise and then examine if any offence is prima facie committed by all or any of the accused."

9. In taking recourse to such a serious process, this Court has consistently held that the Magistrate must apply his mind on the allegations on commission of the offence. In *Darshan Singh Ram Kishan v. State of Maharashtra*,² it was held that the process of taking cognizance does not involve any formal action, but it occurs as soon as the Magistrate applies his mind to the allegations thereafter takes judicial notice of the offence. To quote :

(1971) 2 SCC 654: (AIR 1971 SC 2372).

"8. As provided by Section 190 of the Code of Criminal Procedure, a Magistrate may take cognizance of an offence either, (a) upon receiving a complaint, or (b) upon a police report, or (c) upon information received from a person other than a police officer or even upon his own information or suspicion that such an offence has been committed. As has often been held, taking cognizance does not involve any formal action or indeed action of any kind but occurs as soon as a Magistrate applies his mind to the suspected commission of an offence. Cognizance, therefore, takes place at a point when a Magistrate first takes judicial notice of an offence. This is the position whether the Magistrate takes



cognizance of an offence on a complaint, or on a police report, or upon information of a person other than a police officer. Therefore, when a Magistrate takes cognizance of an offence upon a police report, prima facie he does so of the offence or offences disclosed in such report."

10. In one of the early decisions, *Emperor v. Sourindra Mohan Chuckerbutty*,³ a Division Bench of the Calcutta High Court has taken the same view ... "taking cognizance does not involve any formal action, or indeed action of any kind, but occurs as soon as a Magistrate, as such, applies his mind to the suspected commission of an offence."

(1910) ILR Vol. XXXVII, Cal 412.

11. In *Smt. Nagawwa v. Veeranna Shivalingappa Konjalgi and others*,⁴ this Court

(1976) 3 SCC 736: (AIR 1976 SC 1947).

took the view that in the process of taking cognizance and issue of process to the accused. Magistrate has to form an opinion that a prima facie case is made out against the accused. At that stage, the Magistrate is also competent to consider whether there are inherent improbabilities appearing on the face of the complaint or in the evidence led by the complainant. To quote :

"5. ... It is true that in coming to a decision as to whether a process should be issued the Magistrate can take into consideration inherent improbabilities appearing on the face of the complaint or in the evidence led by the complainant in support of the allegations but there appears to be a very thin line of demarcation between a probability of conviction of the accused and establishment of a prima facie case against him. The Magistrate has been given an undoubted discretion in the matter and the discretion has to be judicially exercised by him. Once the Magistrate has exercised his discretion it is not for the High Court, or even this Court, to substitute its own discretion for that of the Magistrate or to examine the case on merits with a view to



find out whether or not the allegations in the complaint, if proved, would ultimately end in conviction of the accused...."

12. In *Kishun Singh and others v. State of Bihar*,⁵ this Court reiterated the position that where, on application of mind, the allegations in the complaint, according to the Magistrate, if proved, would constitute an offence, cognizance is to be taken of the offence so as to proceed further against the accused. To quote :

(1993) 2 SCC 16: (1993 AIR SCW 771).

"7. ... Even though the expression 'take cognizance' is not defined, it is well settled by a catena of decisions of this Court that when the Magistrate takes notice of the accusations and applies his mind to the allegations made in the complaint or police report or information and on being satisfied that the allegations, if proved, would constitute an offence decides to initiate judicial proceedings against the alleged offender he is said to have taken cognizance of the offence. It is essential to bear in mind the fact that cognizance is in regard to the offence and not the offender. Mere application of mind does not amount to taking cognizance unless the Magistrate does so for proceeding under Ss. 200/204 of the Code. . . ."

13. In *State of W.B. and another v. Mohd. Khalid and others*, it has been held by this Court that while exercising the power to take cognizance, a Magistrate has to see whether there is any basis for initiating judicial proceedings. At paragraph-43, it has been held as follows :

(1995) 1 SCC 684: (AIR 1995 SC 785).

"43. ... Section 190 of the Code talks of cognizance of offences by Magistrates. This expression has not been defined in the Code. In its broad and literal sense, it means taking notice of an offence. This would include the intention of initiating judicial proceedings against the offender in respect of that



offence or taking steps to see whether there is any basis for initiating judicial proceedings or for other purposes. The word 'cognizance' indicates the point when a Magistrate or a Judge first takes judicial notice of an offence. It is entirely a different thing from initiation of proceedings; rather it is the condition precedent to the initiation of proceedings by the Magistrate or the Judge. Cognizance is taken of cases and not of persons."

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(2003) 4 SCC 139: (AIR 2003 SC 1900).

18. In S.K. Sinha, Chief Enforcement Officer v. Videocon International Limited and others,¹¹ this Court held that taking cognizance has no esoteric or mystic significance in criminal law and it connotes that a judicial notice is taken of an offence, after application of mind. To quote :

(2008) 2 SCC 492: (AIR 2008 SC 1213).

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24. Having gone through the order passed by the Magistrate, we are satisfied that there is no indication on the application of mind by the learned Magistrate in taking cognizance and issuing process to the appellants. The contention that the application of mind has to be inferred cannot be appreciated. The further contention that without application of mind, the process will not be issued cannot also be appreciated. Though no formal or speaking or reasoned orders are required at the stage of Sections 190/204, Cr.P.C., there must be sufficient indication on the application of mind by the Magistrate to the facts constituting commission of an offence and the statements recorded under Section 200 of Cr.P.C. so as to proceed against the offender. No doubt, the High Court is right in holding that the veracity of the allegations is a question of evidence. Question is not about veracity of the allegations; but whether



the respondents (appellants) are answerable at all before the Criminal Court. There is no indication in that regard in the order passed by the learned Magistrate. We, hence, set aside the order dated 3-4-2007 passed by the Judicial Magistrate First Class, Srinagar and the impugned order passed by the High Court. The matter is remitted to the Magistrate for fresh consideration and further action, if required to be taken in accordance with law.

13. For the reasons mentioned herein above, I find that continuance of the criminal prosecution of the petitioner would amount to abuse of the process of the court, hence, the criminal prosecutions are liable to be quashed.

14. Accordingly, the order dated 17.05.2014 passed by Shri Anwar Shamim, Judicial Magistrate, Bhagalpur in Complaint Case No. 960 of 2013 by which cognizance has been taken, is hereby set aside and further the entire criminal proceedings emanating therefrom are also quashed.

15. There shall be no order as to costs.

(Mohit Kumar Shah, J)

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AFR/NAFR	NAFR
CAV DATE	02-08-2017
Uploading Date	10-08-2017
Transmission Date	10-08-2017

