

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.17012 of 2015

Arising Out of PS.Case No. -438 Year- 2010 Thana -BHAGALPUR COMPLAINT CASE District-
BHAGALPUR

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Asharam Bapu son of Late Thaumat Sirumalani, resident of Sant Shri Asharamji
Ashram, Motera, P.S.- Chand Kheda, Ahmedabad, Gujarat

.... Petitioner/s

Versus

1. The State of Bihar
2. Sanjay Kumar Modi, S/o Shri Bal Kishore Modi, resident of Sikandarpur, P.O.-
Mirzanhat, P.S.- Mojahidpur, District- Bhagalpur

.... Opposite Party/s

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Appearance :

For the Petitioner/s	:	Mr. Shravan Kumar, Sr. Advocate Mr. Dinesh Maharaj
For the State	:	Mr. Sharadanand Jha
For Opp. Party No. 2	:	Mr. Vinod Shankar Modi

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CORAM: HONOURABLE THE CHIEF JUSTICE

ORAL JUDGMENT

Date: 21-03-2018

This petition under Section 482 of the Code of Criminal Procedure has been filed for quashing the order dated 2.2.2015 in Complaint Case No. C-438/2010 registered against the applicant for offences under Sections 147, 153, 452, 323, 504 and 506 of the Indian Penal Code, passed by the 1st Class Magistrate, Bhagalpur. The complaint case was filed before the Chief Judicial Magistrate, Bhagalpur on 16.3.2010 and according to the complainant, he is a practicing Advocate in Civil Court, Bhagalpur as also a social worker and President of *Karn Seva*. It is said that a religious discourse was held by the present applicant in Shandilya Compound on 12.3.2010



and 13.3.2010 under the leadership of Yagya Vedant Seva Samiti, Bhagalpur.

It is alleged in the complaint that against the applicant various allegations are made. He is facing trial in various courts for offence like murder and sexual exploitation etc. and has in the garb of Dharmaguru and Sadhu misused his position. He does not carry a good reputation. The complaint has been filed by alleging that in the discourse held on 13.3.2010 he insulted the citizens of the State of Bihar by uttering certain words which were detrimental to the prestige, reputation and status of the residents of Bihar. It is further stated that when certain people protested to the same and there was commotion in the crowd, the applicant got angry and on the same day in the evening he entered the office of the complainant, threatened him using abusive language and took away law books worth Rs.5000/-.

Based on the aforesaid allegations, after examining Shri Randhir Jha, Advocate, Shri Rasjesh Jha, Advocate and one Sandeep Jha, the complaint has been registered. Seeking quashment of the said complaint this application has been filed.

Learned Senior Advocate for the petitioner took me through various documents and materials available on record, the nature of allegation made and by placing reliance on the following



judgments of the Supreme Court argued that the complaint is motivated and it has been filed with malafide intention and should be quashed. The judgment relied upon by him are as follows:-

(i) Gian Singh vs State of Punjab

(2012) 10 SCC 303

(ii) Taramani Prakash v State of Madhya Pradesh

(2015) 11 SCC 260

He further took me through the proceedings held and argued that after filing the complaint on 16.3.2010 kept quiet, sought adjournment on various dates, he examined himself on 21.4.2010 and 6.5.2010. Thereafter, his first witness was examined after four months 29.9.2010. The next witness was examined after one year, namely, Shri Randhir Jha on 14.1.2011, Shri Rajesh Kumar on 7.2.2011 and another witness on 25.7.2012 and thereafter on various dates between 31.3.2011 to 15.11.2014. The complainant was absent. The last witness was examined in the year 2012 and cognizance of the matter was taken up merely after five years and the summons issued. Contending that the story is fabricated, concocted and with malafide intention and no independent witness or members of the religious discourse were examined and the complaint has been filed by misusing the position of the complainant and supported by his colleague-officers working in his office and the whole proceeding is liable to be rejected.



Learned counsel for the respondent-complainant refuted the aforesaid submission and argued that the grounds raised by the application in this application are in fact defence of the applicant and at this stage they cannot be looked into and he seeks for dismissal of the application.

I have heard learned counsel for the parties at length and perused the records. Before advertng to consider the facts of the case it is appropriate to consider the legal principle laid down by the Supreme Court for making indulgence by this Court in a proceeding under Section 482 Cr.PC. It has been held by the Hon'ble Supreme Court that a proceeding under Section 482 can be quashed in exercise of the inherent jurisdiction available to this Court for securing the ends of justice, to prevent abuse the process of any court and for preventing illegal action to be taken against a citizen. In the case of *Taramani Prakash* (supra) it has been held by the Hon'ble Supreme Court that if the allegations are absurd, do not make out any case of the circumstances establish abuse of the process of law, the proceeding can be quashed. The allegations made in the complaint if on a bare reading would show that where no offence is made out power can be exercised under Section 482 of the Code. In the aforesaid judgment, in Paragraph-11, the Hon'ble Supreme Court has referred to an earlier judgment in the case of *Amit Kapoor v Ramesh*



Chander [(2012) 9 SCC 460], and the principle has been crystalized in the following manner :-

“11. Referring to earlier decisions, in *Amit Kapoor v Ramesh Chander*, it was observed : (SCC pp.482-84, para 27)

"27.1. Though there are no limits of the powers of the Court under Section 482 of the Code but the more the power, the more due care and caution is to be exercised in invoking these powers. The power of quashing criminal proceedings, particularly, the charge framed in terms of Section 228 of the Code should be exercised very sparingly and with circumspection and that too in the rarest of rare cases.

27.2. The Court should apply the test as to whether the uncontroverted allegations as made from the record of the case and the documents submitted therewith prima facie establish the offence or not. If the allegations are so patently absurd and inherently improbable that no prudent person can ever reach such a conclusion and where the basic ingredients of a criminal offence are not satisfied then the Court may interfere.

27.3. The High Court should not unduly interfere. No meticulous examination of the evidence is needed for considering whether the case would end in conviction or not at the stage of framing of charge or quashing of charge.

27.4. Where the exercise of such power is absolutely essential to prevent patent miscarriage of justice and for correcting some grave error that might be committed by the subordinate courts even in such cases, the High Court should be loath to interfere, at the threshold, to throttle the prosecution in exercise of its inherent powers.

27.5. Where there is an express legal bar enacted in any of the provisions of the Code or any specific law in force to the very initiation or institution and continuance of such criminal proceedings, such a bar is intended to provide specific protection to an accused.

27.6. The Court has a duty to balance the freedom of a person and the right of the complainant or prosecution to investigate and prosecute the offender.

27.7. The process of the court cannot be permitted to be



used for an oblique or ultimate/ulterior purpose.

27.8. Where the allegations made and as they appeared from the record and documents annexed therewith to predominantly give rise and constitute a "civil wrong" with no "element of criminality" and does not satisfy the basic ingredients of a criminal offence, the court may be justified in quashing the charge. Even in such cases, the court would not embark upon the critical analysis of the evidence.

27.9. Another very significant caution that the courts have to observe is that it cannot examine the facts, evidence and materials on record to determine whether there is sufficient material on the basis of which the case would end in a conviction; the court is concerned primarily with the allegations taken as a whole whether they will constitute an offence and, if so, is it an abuse of the process of court leading to injustice.

27.10. It is neither necessary nor is the court called upon to hold a full- fledged enquiry or to appreciate evidence collected by the investigating agencies to find out whether it is a case of acquittal or conviction.

27.11. Where allegations give rise to a civil claim and also amount to an offence, merely because a civil claim is maintainable, does not mean that a criminal complaint cannot be maintained.

27.12. In exercise of its jurisdiction under Section 228 and/or under Section 482, the Court cannot take into consideration external materials given by an accused for reaching the conclusion that no offence was disclosed or that there was possibility of his acquittal. The Court has to consider the record and documents annexed therewith by the prosecution.

27.13. Quashing of a charge is an exception to the rule of continuous prosecution. Where the offence is even broadly satisfied, the Court should be more inclined to permit continuation of prosecution rather than its quashing at that initial stage. The Court is not expected to marshal the records with a view to decide admissibility and reliability of the documents or records but is an opinion formed prima facie.

27.14. Where the charge-sheet, report under Section 173(2) of the Code, suffers from fundamental legal defects, the Court may be well within its jurisdiction to frame a charge.

27.15. Coupled with any or all of the above, where the Court finds that it would amount to abuse of process of



the Code or that the interest of justice favours, otherwise it may quash the charge. The power is to be exercised ex debito justitiae i.e. to do real and substantial justice for administration of which alone, the courts exist.

(Ref. State of W.B. v. Swapan Kumar Guha [(1982) 1 SCC 561 : 1982 SCC (Cri) 283 : AIR 1982 SC 949]; Madhavrao Jiwajirao Scindia v. Sambhajirao Chandrojirao Angre [(1988) 1 SCC 692 : 1988 SCC (Cri) 234]; Janata Dal v. H.S. Chowdhary [(1992) 4 SCC 305 : 1993 SCC (Cri) 36 : AIR 1993 SC 892]; Rupan Deol Bajaj v. Kanwar Pal Singh Gill [(1995) 6 SCC 194 : 1995 SCC (Cri) 1059]; G. Sagar Suri v. State of U.P. [(2000) 2 SCC 636 : 2000 SCC (Cri) 513]; Ajay Mitra v. State of M.P. [(2003) 3 SCC 11 : 2003 SCC (Cri) 703]; Pepsi Foods Ltd. v. Special Judicial Magistrate [(1998) 5 SCC 749 : 1998 SCC (Cri) 1400 : AIR 1998 SC 128]; State of U.P. v. O.P. Sharma [(1996) 7 SCC 705 : 1996 SCC (Cri) 497]; [pic]Ganesh Narayan Hegde v. S. Bangarappa [(1995) 4 SCC 41 : 1995 SCC (Cri) 634]; Zandu Pharmaceutical Works Ltd. v. Mohd. Sharaful Haque [(2005) 1 SCC 122 : 2005 SCC (Cri) 283]; Medchl Chemicals & Pharma (P) Ltd. v. Biological E. Ltd. [(2000) 3 SCC 269 : 2000 SCC (Cri) 615 : AIR 2000 SC 1869]; Shakson Belthissor v. State of Kerala [(2009) 14 SCC 466 : (2010) 1 SCC (Cri) 1412]; V.V.S. Rama Sharma v. State of U.P. [(2009) 7 SCC 234 : (2009) 3 SCC (Cri) 356]; Chunduru Siva Ram Krishna v. Peddi Ravindra Babu [(2009) 11 SCC 203 : (2009) 3 SCC (Cri) 1297]; Sheonandan Paswan v. State of Bihar [(1987) 1 SCC 288 : 1987 SCC (Cri) 82]; State of Bihar v. P.P. Sharma [1992 Supp (1) SCC 222 : 1992 SCC (Cri) 192 : AIR 1991 SC 1260]; Lalmuni Devi v. State of Bihar [(2001) 2 SCC 17 : 2001 SCC (Cri) 275]; M. Krishnan v. Vijay Singh [(2001) 8 SCC 645 : 2002 SCC (Cri) 19]; Savita v. State of Rajasthan [(2005) 12 SCC 338 : (2006) 1 SCC (Cri) 571] and S.M. Datta v. State of Gujarat [(2001) 7 SCC 659 : 2001 SCC (Cri) 1361 : 2001 SCC (L&S) 1201]).

27.16. These are the principles which individually and preferably cumulatively (one or more) be taken into consideration as precepts to exercise of extraordinary and wide plenitude and jurisdiction under Section 482 of the Code by the High Court. Where the factual foundation for an offence has been laid down, the courts should be reluctant and should not hasten to quash the proceedings even on the premise that one or two ingredients have not been stated or do not appear to be satisfied if there is substantial compliance with the requirements of the offence.”



Thereafter reference has been made to various judgments including the judgment in the case of *Kans Raj vs. State of Punjab [(2000) 5 SCC 207]* and the principle for interference has been considered as indicated hereinabove.

If the case in hand is analyzed in the backdrop of the aforesaid principles, the following facts are evident. According to the complainant, the applicant had made certain statements in the religious discourse made by him on 12.3.2010 and 13.3.2010, particularly on 13.3.2010 which according to him are derogatory comments with respect to the residents of Bihar. However, to prove this complaint except for examining himself and interested persons and his colleague-Advocates not a single independent witness who was present on the occasion has been examined. That apart, the complainant does not indicate any material as to what was the reason which prompted the applicant herein to visit his office or house and create a situation as alleged in the complaint. If the allegations in the complaint are scrutinized, it would be seen that on 13.3.2010 at 12 the accused is said to have gone to his office with 10/15 persons and committed the offence. However, in support of the aforesaid contention, except examining his colleagues not a single independent witness has been examined. That apart, the reason as to why the applicant was annoyed with the respondent, what was the act of the



applicant which annoyed him and to provoke him to go to his office has not been spelt out in the complaint. The complaint seems to have been motivated and filed for reasons which are not available and this Court finds the complaint as detailed by the Supreme Court in the case of *Amit Kumar* (supra) to be patently absurd and inherently improbable and beyond the comprehension of a common person. This Court is convinced that it is nothing but an act of misusing the process of law by the respondent and if not prevented, it may cause miscarriage of justice.

Accordingly, keeping in view the principle laid down by the Supreme Court in the case of *Taramani Prakash* (supra) as detailed hereinabove, this application is allowed. The proceeding in Complaint Case No. C-438/2010 and the order dated 2.2.2015 passed by the learned Magistrate 1st Class, Bhagalpur, are all quashed.

The application stands disposed of.

(Rajendra Menon, CJ)

mrl/-

AFR/NAFR	NAFR
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