IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.7256 of 2016

Arising Out of PS.Case No. -409 Year- 2012 Thana -JAHANABAD District- JEHANABAD

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1. Homa Yunus D/o Late Md. Yasub Yunus
2. Md. Kashif Yunus S/o Late Md. Yasub Yunus
   Both Resident of village- Irki, P.S.- Jehanabad, District- Jehanabad. At present resident of Yunus Campus, Shahnad Manzil, S.P. Verma Road, P.s.- Kotwali, District- Patna.

.... Petitioner/s

Versus

1. The State of Bihar
2. Md. Gheyasuddin, S/o Abdul Hamid, Residence of village- Irki, P.O. & P.S.- Jehanabad, District- Jehanabad (Bihar)

.... Opposite Party/s

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Appearance :

For the Petitioner/s	:	Mr. Iqbal Asif Niazi, Adv.
For the informant	:	Dr. Uma Shankar Prasad, Adv.
		Mr. Kamlakant Tiwary, Adv.
		Mr. Kamlakant Singh, Adv.
For the State	:	Mr. Shyam Bihari Singh, APP

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI

ORAL ORDER

4 01-11-2018 Heard learned counsel for the petitioners as well as learned Additional Public Prosecutor along with learned counsel for the O.P. No.2.

2. Petitioners are aggrieved by an order dated 22.09.2015 passed by the Chief Judicial Magistrate Jehanabad whereby and whereunder petitioners along with Yasir Yunus have been summoned to face trial for an offence punishable under Sections 406, 420, 467, 471, 468/34 of the IPC.

3. O.P. No.2, Md. Gheyasuddin filed written report against Homa Yunus, Md. Yasir Yunus, Md. Kashif Yunus alleging inter alia that they have negotiated with him to sale land bearing Plot No.711 corresponding to Khata No.468, Area 12 kattha lying at village-Irki, P.S.-Jehanabad, District-

Jehanabad on 31.01.2010. The consideration amount was settled at rupees three lacs per kattha. It has further been disclosed that he had paid the consideration amount through cheque no.208440, 208439 dated 06.03.2008 to Homa Yunus cheque no.644289, 178871 dated 08.03.2008, cheque no.192009 dated 08.03.2008 totaling amount of Rs.3,44,000/- and further, Rs.14,56,000/- cash on 12.01.2010 and cash appertaining to Rs.18,00,000/- on 31.01.2010 in presence of the witnesses and, Homa Yunus granted receipt thereof. The accused persons, during course of negotiation had assured that the land belongs to them and is free from any kind of encumbrance. They have also shown rent receipt, photocopy of the document. He put belief on their words as, they were his relative. After consultation with his family members, he took decision to purchase the aforesaid land. After receiving the consideration amount the accused persons called Amin, got the land measured whereupon, he had constructed boundary wall incurring expenses of rupees three lacs. During course thereof, accused Md. Yasir Yunus and Md. Kashif Yunus actively co-operated. It has further been disclosed that in due course of time, they began to adopt dilly delaying tactics as a result of which, relationship became strained, whereupon he procured relevant document and after perusal of the same he came to know that the aforesaid land has been recorded in the Khatiyan in name of District Board. Furthermore, no rent is being paid for the same nor, rent receipt has been issued therefor. It has also been disclosed that whatever document has been shown at the end of the accused, same happens to be forged fabricated and, on that very pretext the accused persons succeeded in duping thirty-six lacs.

4. On the basis of the aforesaid written report, Jehanabad P.S. Case No.409/2012 has been instituted, investigated and then, completing the same charge sheet has been submitted whereupon, vide order impugned petitioners including other have been summoned, subject matter of instant petition.

5. It has been submitted at the end of the petitioners that whatever assertion has been made in the written report, all happens to be false and frivolous. It has further been submitted that Homa Yunus petitioner no.1 is the daughter-in-law of the informant other co-accused are brothers of aforesaid Homa Yunus. On account of marital discord, so many cases cropped up in between the son of the informant namely, Ejaz Ahmad with the petitioner no.1 including that of divorce, under Domestic Violence Act, etc. which originated since the year 2010 and, in the aforesaid background in the year 2012, making out a false and frivolous story had filed instant petition. It has further been stated that when the written report is minutely gone through, it is evident that there happens to be specific disclosure at the end of the informant that negotiation for the land was settled on 31.01.2010 while, it has been disclosed at the end of the informant that he had paid the amount through cheque in the year 2008 and, only to make out a subsequent cause of action, disclosed that on 12.01.2010 he had paid Rs.14,56,000/- as well as on 31.01.2010 rupees eighteen lacs. It has also been submitted that in the background of dispute coming from 2010, duly substantiated under Annexure-2 of the instant petition, was it possible at the end of the petitioners to have negotiated accepted the amount, more particularly, when the informant has got no document to suggest that he was in possession of the amount that means to say on 12.01.2010 as well as on 31.01.2010. So submitted that all the allegations suffers from vengeance whereupon the order of cognizance is fit to be set aside.

6. On the other hand, the learned counsel for the O.P. No.2 has submitted that there happens to be specific disclosure with regard to receipt of the money by the O.P. No.1 in whose favour the relevant cheques were issued in the year 2008 as well as payment of residuary by cash. It has further been submitted that aforesaid amount was paid to the petitioner no.1 along with her brothers as a loan at an earlier occasion. Because of the fact that they were not in a possession to return back the aforesaid amount on account thereof, they entered into negotiation and after having been finalized, they received the remaining amount and in token thereof, issued the receipt. Subsequently thereof, the fraudulent activity of the petitioners including her another brother has been traced out whereupon, the O.P. No.2/complainant has every occasion to believe that he was duped of Rs.36,00,000/-. Apart from this, it has also been submitted that whatever submission has been raised at the end of the petitioner is a matter of fact which could be asserted only during course of trial. That being so, instant petition appears to be premature whereupon, is fit to be dismissed. Also submitted that for the purpose of taking of cognizance prima facie material is to be seen, which is found available on the record hence the order impugned is fit to be confirmed.

7. The learned Additional Public Prosecutor endorsed the view.

8. In State of Hariyana & Ors. Versus Bhajan Lal & Ors reported in ***AIR 1992 SC 604*** the points for consideration for quashing of a prosecution/order of cognizance has been categorized and for better appreciation the same is quoted hereinbelow:-

> "(1) Where the allegations made in the first information report or 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 a case against the accused.
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> (2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155 (2) of the Code.
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> (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.
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> (4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, on

investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient grounds for proceedings against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceedings is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(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."

9. Recently in in ***Parbatbhai Aahir @ Parbatbhai. vs The State Of Gujarat*** reported in ***(2017) 9 SCC 841***, the aforesaid criterias, have been magnified and explained and for better appreciation, the same is quoted below:-

(16.1) Section 482 preserves the inherent powers of the High Court to prevent an abuse of the process of any court or to secure the ends of justice. The provision does not confer new powers. It only recognises and preserves powers which inhere in the High Court;

(16.2) The invocation of the jurisdiction of the High Court to quash a First Information Report or a criminal proceeding on the ground that a settlement has been arrived at between the offender and the victim is not the same as the invocation of jurisdiction for the purpose of compounding an offence. While compounding an offence, the power of the court is governed by the provisions of Section 320 of the Code of Criminal Procedure, 1973. The power to quash under

Section 482 is attracted even if the offence is non-compoundable.

(16.3) In forming an opinion whether a criminal proceeding or complaint should be quashed in exercise of its jurisdiction under Section 482, the High Court must evaluate whether the ends of justice would justify the exercise of the inherent power.

(16.4) While the inherent power of the High Court has a wide ambit and plenitude it has to be exercised; (i) to secure the ends of justice or (ii) to prevent an abuse of the process of any court.

(16.5) The decision as to whether a complaint or First Information Report should be quashed on the ground that the offender and victim have settled the dispute, revolves ultimately on the facts and circumstances of each case and no exhaustive elaboration of principles can be formulated;

(16.6) In the exercise of the power under Section 482 and while dealing with a plea that the dispute has been settled, the High Court must have due regard to the nature and gravity of the offence. Heinous and serious offences involving mental depravity or offences such as murder, rape and dacoity cannot appropriately be quashed though the victim or the family of the victim have settled the dispute. Such offences are, truly speaking, not private in nature but have a serious impact upon society. The decision to continue with the trial in such cases is founded on the overriding element of public interest in punishing persons for serious offences.

(16.7) As distinguished from serious offences, there may be criminal cases which have an overwhelming or predominant element of a civil dispute. They stand on a distinct footing in so far as the exercise of the inherent power to quash is concerned.

(16.8) Criminal cases involving offences which arise from commercial, financial, mercantile, partnership or similar transactions with an essentially civil flavour may in appropriate situations fall for quashing where parties have settled the dispute.

(16.9) In such a case, the High Court may quash the criminal proceeding if in view of the compromise between the disputants, the possibility of a conviction is remote and the continuation of a criminal

> proceeding would cause oppression and prejudice and
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> (16.10) There is yet an exception to the principle set out in propositions (16.8) and (16.9) above. Economic offences involving the financial and economic well-being of the state have implications which lie beyond the domain of a mere dispute between private disputants. The High Court would be justified in declining to quash where the offender is involved in an activity akin to a financial or economic fraud or misdemeanour. The consequences of the act complained of upon the financial or economic system will weigh in the balance."

10. In the aforesaid background, now matter in hand is to be looked into. Before adjudicating upon the same, there happens to be no denial at the end of the O.P. No.2 with regard to inter-se relationship as well as with regard to the documents having annexed with the petition under Annexure-2 the continuing litigation amongst the spouses. Moreover, there happens to be specific disclosure in the written report also that both the parties are relative. That means to say right from 2010, as is evident from Annexure-2 the parties are on litigating term. In the aforesaid background, when the written report has been gone through, it is apparent that same has been filed on 29.11.2012. There happens to be no disclosure in the written report that the amount whatsoever been paid to the petitioner no.1 in the year 2008 through cheque was in lieu of loan more particularly in the background of the fact as per disclosure, by such time petitioner no.1 was duly recognizable as daughter-in-law of the informant. That being so, whatever submission has been made at the end of the O.P. No.2, became suspicious. Furthermore, there happens to be specific disclosure that negotiation was finalized on 31.01.2010. There happens to be no disclosure at the end of the O.P. No.2 with regard to commencement of negotiation since the year 2008 so, the amount whatever been paid earlier to 31.01.2010 could be considered as a part of the consideration amount. Apart from this, there should have been a prima facie material to justify that O.P. No.2 was in possession of the such huge amount in cash. In the facts and circumstances of the case, when the parties are on litigating term did not justify the allegation on its face.

11. Consequent thereupon, the facts of the case fulfills the criteria having laid down by the Hon'ble Apex Court whereupon the order impugned would not survive. Accordingly set aside. Petition is allowed.

(Aditya Kumar Trivedi, J.)

Prakash Narayan

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