

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.1281 of 2017

Arising Out of PS. Case No.-773 Year-2015 Thana- BANKA District- Banka *

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1. Md. Yakub Ansari
 2. Md. Ajam Ansari,
 3. Md. Aslam Ansari, All sons of Late Matin Ansari, R/o village - Bari Khanjharpur, P.S. Barari, District - Bhagalpur

... .. Petitioner/s

Versus

1. The State of Bihar
2. Shahid Iqbal Khan, S/o Late Md. Enaytullah Khan, R/o village - Bari Dhaka, P.S. Town, District - Banka

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr. Baidya Nath Thakur-Advocate Mr. Prabhakar Thakur-Advocate Mr. Shankar Kumar Thakur-Advocate Mr. Binod Kumar-Advocate
For the O.P. No.2	:	Mr. Arun Kumar Arun-Advocate Mrs. Subuhi-Advocate
For the State	:	Mr. Ajay Kumar Jha-A.P.P.

CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI
CAV ORDER

4 27-03-2019 Petitioners Md. Yakub Ansari, Md. Ajam Ansari, Md. Aslam Ansari have challenged the order dated 24.10.2016 passed by the Chief Judicial Magistrate, Banka whereby and whereunder they have been summoned to face trial for an offence punishable under Sections 420, 467, 468, 471, 120B of the I.P.C. in connection with Banka P. S. Case No.773 of 2015, G. R. No.2802 of 2015.

2. Opposite Party No.2/ Shahid Iqbal Khan filed complaint petition before Chief Judicial Magistrate, Kolkata



against the petitioners/ accused wherein no date of occurrence has been shown, nor the place of occurrence, though averred that his father Late Md. Enaytullah Khan, during his life time had purchased lands from different vendors in the Year 1943 appertaining to Khata No.1, Khesra No.79, Area 2.79 acre, Khata No.79, Khesra Nos.77, 78, 86, 89, 83 area 24.77 acre. In the Year 1953, his father had executed Libbanama (Gift) in favour of his mother Bibi Najamunissa Begum, who in the Year 1963 executed deed of gift in favour of informant/ complainant as well as his elder brother Javid Iqbal Khan and on the basis thereof, their names were mutated, whereupon are in possession of up-to-date rent receipts. It has also been disclosed that 3.48 acres of land were acquired during course of Chandan Canal Irrigation Project and for that, they have received the compensation. Furthermore, during course of Chakbandi, the land under dispute have been recorded in their names under Khata No.93, Khesra No.177, 184, 188, 199, 266. In the Year 2012, the accused got a forged, collusive, fabricated, sham Kewala and on the basis thereof, got their names mutated. After coming to know about the same, complainant filed Mutation Appeal No.06/13 before the D.C.L.R., who set aside the order and remanded the matter directing the Circle Officer to hear



afresh and pass appropriate order in accordance with law. In pursuance thereof, Circle Officer heard the matter and vide order dated 31.07.2013, dismissed petition filed on behalf of accused against which, they have preferred appeal before the D.C.L.R. bearing No.17/ 2013-14, which has also been rejected vide order dated 26.11.2014. It has also been disclosed that for the purpose of establishment of L.P.G. Bottling Plant, 19 acres out of the total area is to be acquired and for that, necessary steps have already been taken up. Complainant and his brother has already taken proper step for getting compensation. In the aforesaid background, complainant and his brother got up-to-date rent receipt upto Year 2014-15 as well as Land Possession Certificate.

3. Then, it has been asserted that the accused persons hatching a conspiracy in order to grab the compensation, got the Appeal No.17/ 2013-14 revived, procured forged and collusive report of Halka Karmchari as well as Circle Inspector on the basis of which, there happens to be an order of the C.O. on 16.03.2015 followed with an order of the Appellate Court relating to Appeal No.17/ 2013-14 by which, the Mutation having in name of accused persons have been recognized, whereupon accused persons got the rent deposited for the



Financial Year 2014-15 as well as they also procured Land Possession Certificate. Because of the fact that the activity of the C.O. happens to be illegal and further, the C.O. and other officials in a pre-planned manner, under criminal conspiracy with the other accused got the aforesaid illegal activity Bala-Bala, whereupon are liable to be prosecuted.

4. The aforesaid Complaint Petition was sent to the concerned police station for registration as well as investigation of the case, whereupon Banka (Barahat) P. S. Case No.773 of 2015 was registered and after completing investigation, chargesheet has been submitted followed with the order impugned, the subject matter of challenge.

5. Learned counsel for the petitioners has submitted that the whole prosecution happens to be bad in the background of the fact that at an earlier occasion, the aforesaid Complainant/ Opposite Party No.2 had filed Complaint Petition No.589 of 2015, which was dismissed vide order dated 06.04.2016 (Annexure-3). That being so, unless and until, there would have been proper explanation at the end of the Complainant/ Opposite Party No.2, the second complaint would not have been entertained. More particularly, when complainant intentionally forbade to disclose the aforesaid event. In likewise manner, it



has also been submitted that the sale deed having in favour of petitioners is of dated 26.06.1960 and in pursuance thereof, got possession over the land. As by efflux of time, no Civil Suit would be entertainable, whereupon got this case filed putting false and frivolous allegation. Also submitted that Criminal Court has got no competency to declare a sale deed forged and fabricated, hence, instant prosecution is nothing, but an abuse of process of the Court. So, in the facts and circumstances of the case, the order impugned is fit to be set aside.

6. The learned Additional Public Prosecutor along with learned counsel for the Opposite Party No.2 has submitted that crime is never found condoned by way of efflux of time. Moreover, being cognizable offence, there would not be applicability of Limitation Act and that being so, the order impugned is fit to be confirmed.

7. After perusal of the complaint petition as well as after hearing the learned respective counsels along with learned Additional Public Prosecutor, it is apparent that the order impugned would not survive, because of the fact that the complaint petition/ written report speaks about the place of occurrence to be within the jurisdiction of District-Banka where the activities were taken up in pursuance of sale deed allegedly



registered at Additional Registration of Assurance, Calcutta. Secondly, complaint petition was filed before the Metropolitan Magistrate, Kolkata within the province of West Bengal, who have got no jurisdiction to direct the police officials of Banka District within the Bihar Province to register a case and investigate. More Particularly, when the facts of the case did not suggest to be continuing offence. So, there happens to be inherent lacuna persisting on the record.

8. Apart from this, the alleged sale deed is of the Year 1960 and for that, case has been instituted in the Year 2015 and for that, there happens to be no explanation, though during the intermediary period, parties have fought before Revenue Authority, who again is not empowered to declare a sale deed void.

9. In ***Anand Kumar Mohatta and another v. State (Govt. of NCT of Delhi) Department of Home and another reported in 2019 (1) P.L.J.R. 215 (SC)***, it has been held:-

“15. First, we would like to deal with the submission of the learned Senior Counsel for the Respondent No.2 that once the charge sheet is filed, petition for quashing of FIR is untenable. We do not see any merit in this submission, keeping in mind the position of this Court in [Joseph Salvaraj A. v. State of](#)



Gujarat (2011)7 SCC 59. In the case of Joseph Salvaraj A. (*supra*), this Court while deciding the question whether the High Court could entertain the 482 petition for quashing of FIR, when the charge sheet was filed by the police during the pendency of the 482 petition, observed: -

“16. Thus, from the general conspectus of the various sections under which the appellant is being charged and is to be prosecuted would show that the same are not made out even *prima facie* from the complainant's FIR. Even if the charge-sheet had been filed, the learned Single Judge could have still examined whether the offences alleged to have been committed by the appellant were *prima facie* made out from the complainant's FIR, charge- sheet, documents, etc. or not.”

16. Even otherwise it must be remembered that the provision invoked by the accused before the High Court is Section 482 Cr. P.C and that this Court is hearing an appeal from an order under Section 482 of Cr.P.C. Section 482 of Cr.P.C reads as follows: -

“482. Saving of inherent power of the High Court.- Nothing in this Code shall be deemed to limit or affect the inherent powers of the High Court



to make such orders as may be necessary to give effect to any order under this Code, or to prevent abuse of the process of any Court or otherwise to secure the ends of justice.”

17. There is nothing in the words of this Section which restricts the exercise of the power of the Court to prevent the abuse of process of court or miscarriage of justice only to the stage of the FIR. It is settled principle of law that the High court can exercise jurisdiction under [Section 482](#) of Cr.P.C even when the discharge application is pending with the trial court (2000)2 SCC 636. Indeed, it would be a travesty to hold that proceedings initiated against a person can be interfered with at the stage of FIR but not if it has advanced, and the allegations have materialized into a charge sheet. On the contrary it could be said that the abuse of process caused by FIR stands aggravated if the FIR has taken the form of a charge sheet after investigation. The power is undoubtedly conferred to prevent abuse of process of power of any court.

18. The second submission of learned counsel for the Respondent No.2 is that the Appellant No.1 has fraudulently transferred the property which is the subject matter of the agreement dated 03.06.1993 to



his wife and has thereby committed criminal breach of trust. This charge is wholly untenable and rather extraordinary since the alleged fraudulent transfer of property by the Appellant No.1 to his wife, assuming it to be illegal, by no stretch of imagination can constitute the offence of a criminal breach of trust, since the property was not entrusted by the Respondent No.2 to the Appellants. The property belonged to Appellant No.1 and there was therefore no question of Appellants having been entrusted with their own property, and that too by the complainant, who had merely entered into a development agreement in respect of the property.

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25. [*In Indian Oil Corporation v. NEPC India Ltd. and others*](#) (2006)6 SCC 736, this Court observed as follows: -

“13. 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.....”

The Court noticed a growing trend in



business circles to convert purely civil dispute into criminal cases.

We find it strange that the complainant has not made any attempt for the recovery of the money of Rs. One Crore except by filing this criminal complaint. This action appears to be mala fide and unsustainable.

26. [In State of Haryana and Ors. v. Bhajan Lal and Ors.](#) (1992)Supp (1) SCC 335, this Court has set out the categories of cases in which the inherent power under [Section 482](#) of Cr.P.C. can be exercised. Para 102 of the judgment reads as follows: -

“102. In the backdrop of the interpretation of the various relevant provisions [of the Code](#) under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under [Article 226](#) or the inherent powers under [Section 482](#) of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised



and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

(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.

(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.

(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.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no 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 ground for proceeding 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 proceeding 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 mala fide 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.”

27. We are of the opinion that the present case falls under the 1 st, 3rd and 5th category set out in the para 102 of the judgment in the case of Bhajan Lal



(supra). In such a situation, the High Court erred in dismissing the petition of the Appellants filed under [Section 482](#) of Cr.P.C. This was a fit case for the High Court to exercise its inherent power under [Section 482](#) of Cr.P.C. to quash the FIR.

28. It is necessary here to remember the words of this Court in [State of Karnataka v. L. Muniswamy](#) and others (1977)2 SCC 699, which read as follows:

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“7.In the exercise of this wholesome power, the High Court is entitled to quash a proceeding if it comes to the conclusion that allowing the proceeding to continue would be an abuse of the process of the Court or that the ends of justice require that the proceeding ought to be quashed. The saving of the High Court's inherent powers, both in civil and criminal matters, is designed to achieve a salutary public purpose which is that a court proceeding ought not to be permitted to degenerate into a weapon of harassment or persecution. In a criminal case, the veiled object behind a lame prosecution, the very nature of the material on which the structure of the prosecution rests and the like would justify the High Court in quashing the proceeding in the interest of



justice.....”

28. We find that the prosecution is mala fide, untenable and solely intended to harass the Appellants. We are forfeited in view of the Respondent not having made any attempt to recover the deposit of Rs. One Crore through a civil action.

29. We have, therefore, no hesitation in quashing the FIR and the charge sheet filed against the Appellants. Hence, the FIR No.0139/2014 dated 20.08.2014 and charge sheet dated 03.08.2018 are hereby quashed.

10. Consequent thereupon, order impugned is set aside. Petition is allowed.

(Aditya Kumar Trivedi, J)

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