

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.51582 of 2015

Arising Out of Complaint Case No.-263 Year-2015 Thana- JEHANABAD COMPLAINT
CASE District- Jehanabad

=====

Ritesh Tiwary @ Ashutosh Tiwari, Son of Kishore Tiwary, resident of Village
Ganghar, P.S. Ghoshi, District - Jehanabad (Bihar).

... .. Petitioner/s

Versus

1. The State of Bihar.
2. Malti Devi Wife of Ram Ishwar Tiwary Resident of Vill - Daharpur, P.S.
Ghosi and District - Jehanabad, At present resident of village - Sandhar, P.S.
Ghosi, District - Jehanabad.

... .. Opposite Party/s

=====

Appearance :

For the Petitioner/s	:	Mr. Rabindra Nath, Advocate
For the State	:	Ms. Shaheen Begum, Advocate

=====

CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN
AMANULLAH

ORAL JUDGMENT

Date : 07-01-2019

Heard learned counsel for the petitioner; learned A.P.P.
for the State and learned counsel for the opposite party no. 2.

2. The petitioner has moved the Court under Section
482 of the Code of Criminal Procedure, 1973 (hereinafter referred
to as the 'Code') for the following relief:

*“That this is an application for quashing
order dated 25.5.2015 taking cognizance
against the petitioner of offences under sections
380 and 457/149 who has been made and*



accused under section 380,457,147,149 of Indian Penal Code in the Complaint Case No. 263 of 2015 pending in the court of Sri Sandip Patel, Judicial Magistrate, 1st Class, Jehanabad.”

3. The allegation against the petitioner and eight others is of collectively breaking the lock of the room of the opposite party no. 2 (complainant) and taking away various materials and specifically against the petitioner of prompting the other accused to commit the crime.

4. Learned counsel for the petitioner submitted that this is a classic case of how the process of the Court is abused by instituting false and frivolous criminal cases for oblique purposes. It was submitted that the petitioner along with other family members, who are agnates of the husband of the opposite party no. 2, have been roped in this false case only for the purpose of putting pressure on them not to contest the Probate Case No. 6 of 2015 passed by the opposite party no. 2 against the petitioner. Learned counsel submitted that the present complaint case was filed on 25.03.2015 whereas the probate case was filed on 13.03.2015 with regard to a Will according to which the Aunt (*Phua*) of the husband of the opposite party no. 2, who is said to have given the property from her husband's side to the opposite party no. 2. Learned counsel submitted that without contesting the



probate case, which is based on a disputed Will, to exert undue pressure by abusing the process of the Court, the present criminal case has been filed. Learned counsel submitted that the parties being agnates and the allegation made of breaking the lock and taking away materials when both live side by side, cannot be believed by a prudent man. It was submitted that the falsity of the allegation would be clear from the fact that the petitioner, who at the relevant time was out of India, has also been made a party. In support of such contention, learned counsel has brought on record the relevant pages of the passport which shows that the petitioner had left India on 6th December, 2014 and had returned on 12th September, 2015 and, thus, on the alleged date of occurrence i.e., 23.03.2015 he could not have been present in the village, much less, committed the offence. Learned counsel submitted that the Hon'ble Supreme Court has way back settled the issue with regard to quashing of criminal cases in the case of **State of Haryana v. Bhajan Lal** reported as **1992 Supp (1) SCC 335**, where in paragraph no. 102, certain categories have been enumerated for quashing of such criminal proceedings for securing the ends of justice and relying on the same, the Hon'ble Supreme Court in the case of **Vineet Kumar vs. State of U.P.** reported as **2017 (1) PLJR (SC) 344**, the relevant being at paragraphs no. 35 and 39,



has interfered in the matter and quashed the F.I.R. itself. It was submitted that similarly in the case of **Himachal Pradesh Cricket Association v. State of H.P.** reported as **2018 SCC OnLine SC 2419**, has given instances where the Court ought to interfere and quash the criminal proceeding, the relevant being at paragraph no. 49.

5. Learned A.P.P. and learned counsel for the opposite party no. 2 submitted that the Court below after holding enquiry and recording the statement of witnesses has taken cognizance and whatever defence the petitioner may have can be taken at the time of trial but the proceeding at this stage ought not to be quashed.

6. Having considered the facts and circumstances of the case and submissions of learned counsel for the parties, the Court finds that a case for interference has been made out. From the plain reading of the complaint, in the background of the fact that the parties are close agnates and next door neighbours, the same appears to be cosmetic and almost difficult to be believed by a prudent man. Moreover, the case being filed in close proximity of filing of a probate case with regard to a tenuous claim of a married woman, willing the land of her husband in favour of her nephew, which is being contested, itself indicates that to exert undue pressure, the present criminal case has been instituted. The real



motive of filing of the criminal case would be apparent from the fact that the petitioner who was clearly out of India, as has been shown to the Court and which has gone unrebutted by non filing of any counter affidavit by opposite party no. 2, indicates that the contention of learned counsel for the petitioner that the events narrated in the complaint petition did not actually occur get credence. Moreover, in the complaint itself, it has been stated that on the land claimed by the opposite party no. 2 and other co-accused were not allowing for further steps being taken with regard to the crops standing indicates that the whole dispute is with regard to the land which shows that for settling such dispute, the present case has been instituted. The Court finds that the decision relied upon by learned counsel for the petitioner clearly covers the present case also. The Court would further like to add that even in a recent decision of the Hon'ble Supreme Court dated November 15, 2018, in **Criminal Appeal No. 1395 of 2018 arising out of SLP (Crl.) No. 3730 of 2016**, in the case of **Anand Kumar Mohatta and Anr. vs. State (Govt. of NCT of Delhi) Department of Home and Anr.**, it has been reiterated that the Court under Section 482 of the Code can interfere at any stage. In this context, it would be relevant to reproduce paragraphs no. 15, 16 and 17 which read as under:



“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. 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. 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.”

7. Moreover, in the said case, the Court has also quoted paragraph no. 102 of the decision in the case of **State of Haryana v. Bhajan Lal** reported as **1992 Supp (1) SCC 335**, where the following has been held:

“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 exercise.

(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.”

8. Moreover, the Hon’ble Supreme Court in the case of

Indian Oil Corpn. v. NEPC India Ltd. reported as **(2006) 6**

SCC 736, at paragraph no. 13 has held as under:

“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.....”



9. Having considered the facts and circumstances of the case and submissions of learned counsel for the parties, and the discussions made hereinabove, in the opinion of the Court, the present case falls under the 5th and 7th categories set out in paragraph no. 102 of the aforesaid judgment in the case of **Bhajan Lal** (supra). Moreover, the Court is tempted to reproduce paragraph no. 7 from the judgment of the Hon'ble Supreme Court in the case of **State of Karnataka v. L. Muniswamy and others**, reported as **1977(2) SCC 699**, which reads as under:

“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.....”

10. Accordingly, the application is allowed. The order dated 25.05.2015, taking cognizance against the petitioner for offences under Sections 380/457/149 of the Indian Penal Code in



Complaint Case No. 263 of 2015 by the Court below, stands
quashed.

(Ahsanuddin Amanullah, J)

P. Kumar

AFR/NAFR	AFR
U	
T	

