

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.1049 of 2017

Arising Out of PS. Case No.-200 Year-2016 Thana- MOUZA HIDPUR District- Bhagalpur

1. Madhusudan Kumar son of Late Kamleshwari Pd. Sah, resident of Mohalla Gulabi Bagh, Ramdeo Sah Lane, P.S. Babarganj, District Bhagalpur.
2. Shrawan Kumar Sah @ Shrawan Sah son of Late Om Prakash Sah, resident of Mohalla Gulabi Bagh, Ramdeo Sah Lane, P.S. Babarganj, District Bhagalpur.
3. Manish Kumar son of Shankar Sah, resident of Mohalla Gulabi Bagh, Ramdeo Sah Lane, P.S. Babarganj, District Bhagalpur.
4. Manoj Sah @ Nanaj Kumar Sah, son of Sachchidanand Sah, resident of Mohalla Gulabi Bagh, Ramdeo Sah Lane, P.S. Babarganj, District Bhagalpur.

... .. Petitioner/s

Versus

1. The State Of Bihar Through Director General Of Police, New Secretariat, Sachivalaya, Patna
2. Inspector General of Police, Bhagalpur.
3. Deputy Inspector General of Police, Bhagalpur.
4. Superintendent of Police, Bhagalpur.
5. Md. Aftab Alam, Assistant Sub-Inspector, P.S. Mohahidpur (Babarganj), Bhagalpur.
6. Dasrath Paswan son of Late Phanji Paswan, Ambabagh, Shitlasthan, Aliganj, P.S. Babarganj, District Bhagalpur.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Dayanand Singh
For the Respondent/s : Mr. Parth Sarthi GA 4

CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH

ORAL JUDGMENT

Date : 10.01.2020

The present petition has been filed for setting aside the proceedings of a case bearing Mohahidpur (Babarganj) P.S. Case No. 200 of 2016, whereby the informant is stated to have falsely and maliciously implicated the petitioners under Sections 148, 341, 342, 323, 324, 307, 504, 506/34 of the Indian Penal Code and sections 3(x) (xv) of the Scheduled Caste and Scheduled



Tribe (Prevention of Atrocities) Act, 1989. It is further prayed to direct the authorities to investigate the aforesaid case properly and take action against those who are responsible for fabricating false evidence and initiating illegal criminal proceedings against the petitioners.

2. The brief facts of the case are that a case bearing Mojahidpur (Babarganj) P.S. Case No. 200 of 2016 appears to have been registered on 07.11.2016 on the basis of a written report of the informant namely Dasarath Paswan (respondent no.6 herein) before the Officer-in-charge, Babargabh Police Station, Bhagalpur, wherein it has been alleged that on 07.11.2016 at about 9 AM in the morning, his son Sagar Paswan was eating food in his house and when he had got up and was washing his hands, the accused persons including the petitioners herein had come inside the house whereafter, they had caught hold of the son of the informant and had dragged him out of the house, while assaulting him repeatedly by means of *sticks*, hockey stick and butt of the gun, resulting in the son of the informant receiving grievous injuries on his head, hands and legs, whereupon the son of the informant is stated to have fallen down on the ground and had become unconscious. It is further alleged by the informant that the said accused persons had tried



to implicate his son in a bomb incident by forcibly keeping cracker bomb in the pocket of his son. It is also alleged by the informant that the said accused persons had threatened that they would not let any person from the Paswan community live in the said mohalla (area).

3. The learned counsel for the petitioner has submitted that the petitioner has been falsely implicated in the present case and the said case is a counter case in retaliation to a case filed by the petitioner no. 1 against the son of the informant and other accused persons of the said case bearing Mujabidpur (Babarganj) P.S. Case No. 199 of 2016 dated 07.11. 2016. It is submitted that the present case arises out of the prevailing animosity in between the petitioners, his son and the informant of the present case and the petitioners have been falsely and maliciously implicated in a false case, only on account of vengeance and are undergoing extreme trauma and agony. It is further submitted that admittedly, the son of the informant had indulged in throwing bombs at the petitioners on account of the resentment being harboured by him as against the petitioners herein and it is apparent from the CCTV footage installed at the place of occurrence that the son of the informant had hurled bombs at the petitioners. Lastly, it is submitted that a bare



perusal of the FIR would show that no offence as alleged, is made out as against the petitioners herein, hence, it is submitted that the instant prosecution case, being fictitious in nature, is fit to be quashed.

4. At this juncture, the learned counsel for the petitioners has referred to a supplementary affidavit filed on behalf of the petitioners on 18th October, 2017, wherein it has been mentioned that an out of court settlement has been arrived at in between the accused persons and the informant of Mohajidpur (Babarganj) P.S. Case No. 200 of 2016 and a compromise petition has been duly filed in the court of learned C.J.M., Bhagalpur on 10.01.2017. It is submitted that since a compromise has been arrived at in between the parties, there is no requirement of prolonging the criminal prosecution.

5. The learned counsel for the State has referred to the counter affidavit filed on behalf of the Superintendent of Police, Bhagalpur wherein it has been stated that after the aforesaid Mohajidpur (Babarganj) P.S. Case No. 200 of 2016 was registered on 07.11.2016, investigation was taken up and during the course of investigation, the statement of the informant was recorded, place of occurrence was verified, the statements of various witnesses namely, Bishundeo Paswan, Shiv Narayan



Sah, Bablu Paswan, Langra Choudhary, Ajoy Sah, Siddhartha Kumar and Shiv Narayan Paswan were recorded in the case diary. The case was then supervised by the Deputy Superintendent of Police, Bhagalpur and the injury report of Sagar Paswan was procured and incorporated in paragraph No.- 27 of the case diary, a bare perusal whereof would show that the said Sagar Paswan has received grievous injury. It is further submitted by the learned counsel for the State that the case has been found to be true as against the accused persons, including the petitioners herein and they are evading arrest. It is also the contention of the learned counsel for the respondent State that as far as Mujahidpur (Babarganj) P.S. Case No. 199 of 2016 is concerned, the same has got its own independent identity and law shall take its own course, however, the same cannot form the sole basis for the purposes of quashing the instant prosecution.

6. I have heard the learned counsel for the petitioners as also the learned counsel for the respondent State and perused the materials on record. It would be apparent from the order dated 02.11.2017 passed by this Court in the present case that notices were issued to the private respondent no. 6 i.e. the informant of the aforesaid Mojahidpur (Babarganj) P.S. Case No. 200 of 2016 a prayer being made by the learned counsel



for the petitioners to the effect that since the parties have entered into a compromise, continuance of criminal prosecution would be an abuse of the process of the court.

7. At this juncture, it would be relevant to refer to the law laid down by the Hon'ble Apex Court on the subject matter in question in the case of **State of Orissa & Ors. vs. Saroj Kumar Sahu**, reported in *(2005) 13 SCC 540*, in which the Hon'ble Apex Court has held that probabilities of the prosecution version cannot be analysed at the stage of a quashing application. The Hon'ble Apex Court has also held that when an FIR is lodged at the police station, then the mala fide of the informant would be of secondary importance. It is the material collected during the investigation and evidence led in court which decides the fate of the accused persons. The allegations of mala fides against the informant are of no consequence and cannot by themselves be the basis for quashing the proceedings. In this regard, it would be relevant to reproduce paragraph no. 11 of the afore said judgement rendered in the case of **Saroj Kumar Sahu** (supra) herein below:-

“11. As noted above, the powers possessed by the High Court under [Section 482](#) of the Cr.P.C. are very wide and the very plenitude of the power requires great caution in its exercise. Court must be



careful to see that its decision in exercise of this power is based on sound principles. The inherent power should not be exercised to stifle a legitimate prosecution. The High Court being the highest court of a State should normally refrain from giving a prima facie decision in a case where the entire facts are incomplete and hazy, more so when the evidence has not been collected and produced before the Court and the issues involved, whether factual or legal, are of magnitude and cannot be seen in their true perspective without sufficient material. Of course, no hard and fast rule can be laid down in regard to cases in which the High Court will exercise its extraordinary jurisdiction of quashing the proceeding at any stage. (See: [Janata Dal v. H. S. Chowdhary](#), [1992] 4 SCC 305, and [Raghubir Saran \(Dr.\) v. State of Bihar](#), AIR (1964) SC 1). It would not be proper for the High Court to analyse the case of the complainant in the light of all probabilities in order to determine whether a conviction would be sustainable and on such premises arrive at a conclusion that the proceedings are to be quashed. It would be erroneous to assess the material before it and conclude that the complaint cannot be proceeded with. When an information is lodged at the police station and an offence is registered, then the mala fides of the informant would be of secondary importance. It is the material collected during the investigation and evidence led in court which decides the fate of the



accused person. The allegations of mala fides against the informant are of no consequence and cannot by themselves be the basis for quashing the proceedings. (See: [Dhanalakshmi v. R. Prasanna Kumar](#), [1990] Supp SCC 686, [State of Bihar v. P. P. Sharma](#), AIR (1996) SC 309, [Rupan Deol Bajaj v. Kanwar Pal Singh Gill](#), [1995] 6 SCC 194, [State of Kerala v. O.C. Kuttan](#), AIR (1999) SC 1044, [State of U.P. v. O.P. Sharma](#), [1996] 7 SCC 705, [Rashmi Kumar v. Mahesh Kumar Bhada](#), [1997] 2 SCC 397, [Satvinder Kaur v. State \(Govt. of NCT of Delhi\)](#), AIR (1996) SC 2983 and [Rajesh Bajaj v. State NCT of Delhi](#), [1999] 3 SCC 259)”.

8. In yet another judgement, rendered by the Hon’ble Apex Court in the case of **Madhavrao Jiwajirao Scindia vs. Sambhajirao Chandrojirao Angre** , reported in (1998) 1 SCC 692, the Hon’ble Apex Court has held in paragraph no. 7 thereof as follows:-

“7. The legal position is well settled that when a prosecution at the initial stage is asked to be quashed, the test to be applied by the court is as to whether the uncontroverted allegations as made prima facie establish the offence. It is also for the court to take into consideration any special features which appear in a particular case to consider whether it is expedient and in the interest of justice to permit a prosecution to continue. This is so on



the basis that the court cannot be utilised for any oblique purpose and where in the opinion of the court chances of an ultimate conviction is bleak and, therefore, no useful purpose is likely to be served by allowing a criminal prosecution to continue, the court may while taking into consideration the special facts of a case also quash the proceeding even though it may be at a preliminary stage."

9. This aspect of the matter has further been considered by the Hon'ble Apex Court in a judgement reported in (2012) 4 SCC 547 in the case of **State of Orissa Vs. Ujjal Kumar Burdhan**, paragraph no.8 whereof is reproduced herein below:-

"8. It is true that the inherent powers vested in the High Court under Section 482 of the Code are very wide. Nevertheless, inherent powers do not confer arbitrary jurisdiction on the High Court to act according to whims or caprice. This extraordinary power has to be exercised sparingly with circumspection and as far as possible, for extraordinary cases, where allegations in the complaint or the first information report, taken on its face value and accepted in their entirety do not constitute the offence alleged. It needs little emphasis that unless a case of gross abuse of power is made out against those in charge of investigation, the High Court should be loath to interfere at the early/premature stage of investigation".



10. It is a well established principles of law that the legitimate prosecution should not be stifled in the midway. It is equally a well settled law that the Courts should be slow in interdicting the trial against the accused persons and the accused persons should be discouraged from protracting the trial and preventing culmination of the criminal cases by resorting to uncalled for and unjustified litigation. At this stage, this Court is not required to analyse all the materials, including the pros and cons resultant or expected law, etc. and the evidentiary value, credibility or otherwise of the statement, veracity of various documents is required to be appreciated at the time of trial and a decision is required to be taken one way or the other.

11. Now, coming back to the present case, it would suffice to state that no endeavour has been made by the private respondent no.6 to buttress the factum of a compromise having been entered into in between the accused persons (petitioners herein) and the informant of the present case in question. Thus, this court is left with no option but to consider the fact and circumstances of the case as also the materials available on record, on its own merits, from a bare perusal of which it is clear that there is prima facie ample evidence on record to



suggest the complicity of the petitioners in the alleged crime and moreover, the independent witnesses have also supported the case of the prosecution in their statement made before the police, as recorded in the case diary. In fact, the Deputy Superintendent of Police, Bhagalpur, in his supervision note dated 25.02.2017 has fully discussed the materials collected during the course of investigation and has come to the conclusion that the present case i.e. Mojahidpur P.S. Case No. 200 of 2016 under Sections 148, 341, 342, 323, 324, 307, 504, 506/34 of the Indian Penal Code and sections 3(x) (xv) of the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989, appears to be true against the petitioners herein. In fact, this Court further finds that injury report of the son of the informant is also annexed to the counter affidavit filed by the respondent Superintendent of Police, Bhagalpur, from which it appears that he has received grievous injuries.

12. Considering the facts and circumstances of the case, the materials on record and taking into account the submissions made by the learned counsel for the parties as also taking into account the law laid down by the Hon'ble Apex Court in the Judgments referred to herein above, this Court is of the view that uncontroverted allegations, as made in the present case,



prima facie establish the offence as alleged and moreover, there are enough materials, collected by the police during the course of investigation, so as to prima facie make out a case as against the petitioners herein, for the offences alleged and accordingly proceed further in the matter. Thus, this Court is of the considered opinion that a legitimate prosecution cannot be stifled midway, hence, this Court finds that the criminal prosecution, launched against the petitioners herein is not required to be quashed at this stage. Accordingly, the present petition stands dismissed.

(Mohit Kumar Shah, J)

Tiwary/-

AFR/NAFR	AFR
CAV DATE	N/A
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