

**IN THE HIGH COURT OF JUDICATURE AT PATNA
(FROM RESIDENTIAL OFFICE VIA VIDEO APPLICATION)**

Criminal Writ Jurisdiction Case No.374 of 2017

Arising Out of PS. Case No.-1485 Year-2014 Thana- PATNA COMPLAINT CASE District- Patna

Vikas Kumar son of Late Baleshwar Sharma, Resident of Road No. 25 A,
Rajeev Nagar, P.S.- Rajeev Nagar, District- Patna. Petitioner
Versus

1. The State Of Bihar Through Senior Superintendent Of Police, Patna
 2. The Senior Superintendent of Police, Patna.
 3. Raj Kumar Kanodia, Son of Late Baidyanath Kanodia, Resident of Pua Gali,
Patna City, P.S.- Chowk, District- Patna.
- Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Girijesh Kumar, Advocate Mr. Vipin Kumar, Advocate
For the Respondent	:	Mr. AC to AG
For Res. No. 3	:	Mr. Dayashankar Pd. Sinha, Advocate

CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD

CAV JUDGMENT

Date : 01-06-2020

This criminal writ application has been preferred for quashing of the order dated 21.03.2016 passed by learned Sub-Divisional Judicial Magistrate, Patna City, Patna (hereinafter in short 'S.D.J.M.') by which the learned S.D.J.M. has taken cognizance of the offences under Sections 323, 448, 427/34 of the Indian Penal Code in the protest-cum-complaint case no. 1485 of 2014 arising out of Alamganj P.S. Case No. 274 of 2013 and decided to issue summons against the persons named in the complaint petition including the petitioner.

Brief facts of the case

2. It appears on perusal of the records that respondent no. 3 had lodged a Police case being Alamganj P.S. Case No. 274 of 2013 dated



28.07.2013. In his written report to the Officer-in-charge of the Police Station the respondent no. 3 claimed that he had purchased two Katthas of land bearing plot no. 1387 in Khata No. 123, Thana No. 11, Mauja Sandalpur, Bajrangpuri (Payare Lal ka Bag) vide registered sale deed dated 09.01.2002 from one Trimurti Sahkari Grih Nirman Samiti, Lohanipur, Patna (hereinafter called 'co-operative society'). According to him, his vendor Co-operative Society had purchased the land through a deed of conveyance from one Ashok Kumar Mauar a resident of mohalla Sultanganj district Patna on 05.02.1990. The land is recorded in the name of the original vendor Ashok Kumar Mauar vide Jamabandi No. 176. The respondent no. 3 further claimed that from the date of purchase of the land he was in possession of the land and in the circle office name of his wife has been mutated in respect of the said land and revenue receipts are being issued. Respondent no. 3 alleged that on 28.07.2013 at about 9:25 in the morning while he was carrying on the construction work inside the boundary wall of his land which had an iron grill gate and a name plate fixed thereon, all of a sudden his neighbour (1) Arvind Kumar Mishra son of Sri Ganesh Mishra, (2) Manoj Kumar @ Manoj Kumar Rai, (3) Chandan Kumar Darsh New (4) Vikash Kumar (petitioner) and 3-4 unknown persons whom he can identify came there lashed with lathi-danda. They demanded Rs. 10 lakhs (in the written report the amount has been written in figure as '10,0000'). Respondent No. 3 further alleged that the accused persons started beating his friends and the labourers and they damaged the iron grill gate, threw away the



name plate in the nearby water reservoir and took away the articles of the informant.

3. The records further reveal that the first information report was received in the office of the learned Additional Chief Judicial Magistrate, Patna City (hereinafter in short 'A.C.J.M') on 30.07.2013, though 29.07.2013 was a working day but it was sent to the court of learned A.C.J.M. after two days.

4. The petitioner moved this Court for quashing of the first information report by filing a Cr. Misc. No. 38606 of 2013. A learned co-ordinate Bench of this Court disposed of the said criminal miscellaneous application on 19.09.2013 with a direction to the Senior Superintendent of Police, Patna to examine the matter from all angle including the grievance of the petitioner and it was directed that the petitioner will be allowed to place his case for consideration, up to the stage of the consideration of the matter no coercive action was to be taken against the petitioner. Thereafter, the investigation was carried out and it was found by the Investigating Officer that the case has no basis and there was no material to proceed against the accused persons.

5. The petitioner has narrated that he has also purchased an area of 2190 sq. feet in plot no. 1387 in the year 2005 by a registered sale deed. After purchase of the land his name has been mutated and Jamabandi has been created in his name. He has placed on record the copy of the sale deed as Annexure '4' to the present application. The sale deed shows that the petitioner has purchased 1 kattha 12 Dhur and 4 Dhurki (2190 Sq. feet), out of 38 decimal



of the said plot and the boundary walls have been dully indicated therein. According to the petitioner, the petitioner had fenced the plot by bamboos and put his lock on the gate. On 19.07.2013 he was informed that some anti-social elements have removed all the fencing by breaking the lock and had also cut down iron rods which were piled for making boundary wall. In this regard the petitioner claims to have visited and informed the Alamganj Police Station with his friend and requested the Officer-In-charge of the Police Station to lodge the first information report against respondent no. 3 but the Officer-In-charge refused to do so and asked the petitioner to pay sum of Rs. 50 thousand as extraneous consideration. The petitioner has stated that when after ten days no action was taken by the Alamganj Police Station, he submitted a written complaint on 13.07.2013 to the Senior Superintendent of Police, Patna, copy of which is enclosed as Annexure '5' to the present application.

6. It is further stated that an another purchaser Manoj Kumar who is one of the accused in this case had also purchased a part and portion of plot no. 1387 in the name of his wife Ranju Kumari had lodged a written complaint with the Alamganj Police Station on 18.07.2013 against respondent no. 3 for misbehaving with his wife Ranju Kumari and demand of Rangdari by the respondent no. 3. When FIR was not lodged on the written complaint dated 18.07.2013, the husband of Ranju Kumari had filed an application under Section 156(3) of the Cr.P.C. before the learned A.C.J.M., Patna City and on 19.07.2013 the learned A.C.J.M. directed the Officer-In-charge of Alamganj



Police Station to lodge the FIR but the Alamganj Police Station registered the FIR only on 29.07.2013 against respondent no. 3 and 8-10 other unknown persons. Copy of the FIR giving rise to Alamganj Police Station 276 of 2013 has been annexed as Annexure '7' to the present application. In fact this F.I.R. was lodged much earlier but registered on 29.07.2013.

7. In the aforementioned background when both the cases were investigated, Police found Alamganj P.S. Case No. 276 of 2013 true but Alamganj P.S. Case No. 274 of 2013 was not found true and hence, the investigating officer was directed to submit final form. The Inspector of Police-cum-Station House officer of Alamganj Police Station has stated on record by filing an affidavit that the case filed against the petitioner was found false due to lack of evidence and the case lodged against respondent no. 3 was found true, accordingly directions were given to the investigating officer and a final form bearing no. 117/14 dated 10.07.2014 was submitted before the learned court below through the office of the S.D.P.O., Patna City on 27.08.2014. It is contended that as soon as the respondent no. 3 got to know about the directions to the investigating officer to submit final form, he filed a protest petition in the court of learned A.C.J.M. on 11.08.2014 alleging that the Police is trying to hush-up the case against the accused persons in Alamganj P.S. Case No. 274 of 2013.

8. The protest petition lodged by respondent no. 3 was treated as complaint case giving rise to Complaint Case No. 1485 of 2014. A copy of the



complaint petition and the statement on oath of the complainant in course of inquiry are available on the record as Annexure '12' to the present application. In his protest petition, once again, respondent no. 3 has reiterated the allegations.

Submission of the Petitioner

9. Learned counsel for the petitioner submits that the order taking cognizance and issuance of summons insofar as it relates to the present petitioner has been passed in a routine and mechanical manner by the learned S.D.J.M. It is submitted that in course of investigation Police did not find any material to support the allegations against the accused persons including the petitioner, hence, a final form was submitted. Learned counsel submits that a bare perusal of the protest-cum-complaint petition (Annexure '12') would show that the allegations made therein are completely vague and clearly indicating that a pure and simple civil dispute between the parties have been tried to be given a colour of criminal proceeding. In this connection, the petitioner has brought on record certain facts based on records and it is the submission of learned counsel for the petitioner that those facts and documents having remained uncontroverted by the respondent no. 3, in view of the judgment of the Hon'ble Apex Court in the case of **Rajiv Thapar & Ors V Madan Lal Kapoor** reported in (2013) 3 SCC 330, this Court while exercising it's inherent and extra ordinary power may quash the order taking cognizance and issuance of summons by relying upon those documents.



10. Learned counsel submits that respondent no. 3 filed a totally frivolous and vexatious case on 29.07.2013 when he found that Police was going to register the case lodged by co-accused Manoj Kumar in which respondent no. 3 was named. He lodged an FIR in hurry which was registered as P.S. Case No. 274 of 2013 by antedating to 28.07.2013. It is for this reason that FIR No. 274 of 2013 was sent to the court of learned A.C.J.M. only on 30.07.2013. It is submitted that there is no *prima-facie* case under Sections 323, 448, 427/34 of the Indian Penal Code.

11. According to the petitioner the wife of Manoj Kumr filed a Land Dispute No. 55/13-14 against respondent no. 3 in the court of Deputy Collector Land Reforms, Patna City (hereinafter in short 'DCLR') under Bihar Land Dispute Act, 2009. This petitioner was not made a party in the said case, therefore, he filed an intervention application to make him a party as the respondent no. 3 was also looking to grab a par/portion of the petitioner's land. The DCLR disposed of the said case vide order dated 14.02.2014 with observation that the case involves a pure question of title and the same can be decided by a competent civil court. Smt. Ranju Kumari wife of Manoj Kumar has filed a Title Suit No. 279 of 2014 in the court of learned Sub-Judge I, Patna City for a declaration that she has absolute right and title over the suit property and further declaration that the sale deed dated 09.01.2002 in favour of defendant (respondent no. 3 in this case) is illegal and void. A copy of the plaint of Title Suit No. 279 of 2014 has been brought on record as Annexure



‘13’ to the present application. The said suit is presently going on and an interim order has been passed under Order XXXIX Rule 1 and 2 of the Civil Procedure Code on 28.07.2016 restraining the defendant (Raj Kumar Kanodia and his wife) from interfering in the suit property and also directed the defendant not to alienate or do anything which can cause damage to the suit property till the disposal of the present suit.

12. It is stated that the respondent no. 3 wanted to grab the land of Ranju Kumari and part land of the petitioner from western side and only in order to put undue pressure upon the petitioner and co-accused the present case was lodged. The petitioner has also alleged malafides against respondent no. 3 alleging that he had got another case filed through one Jhular Devi against the petitioner. It is thus, the submission of learned counsel for the petitioner that the present case being at best a dispute of purely civil nature, continuation of a criminal proceeding against the petitioner would only be an abuse of the process of the court and the ends of justice require that the criminal proceeding be quashed.

13. Learned counsel for the petitioner relied upon the judgment of the Hon’ble Apex court in the case of State of **Haryana Vs. Ch. Bhajan Lal & Ors.** reported in **1992 (supl.) 1 SCC 335 (para 102)**, **Md. Ibrahim Vs. State of Bihar** reported in **(2009) 8 SCC 751**, in which the Hon’ble Apex Court has noticed it’s earlier judgment in **G. Sagar Suri vs. State of U.P.** reported in **(2000) 2 SCC 636** and **Indian Oil Corporation Vs. NEPC**



Indian Ltd. reported in **(2006) 6 SCC 736**. Paragraph '7' of the judgment from **Md. Ibrahim** case (Supra) has been relied upon.

14. Learned counsel further relied upon the judgments of the Hon'ble Apex Court in the case of **Jitendra Raghuvanshi v. Babita Raghuvanshi** reported in **(2013) 4 SCC 58** and **Parbatbhai Aahir v. State of Gujarat** reported in **(2017) 9 SCC 641** to submit that this Court has inherent power as a superior court to make such orders as are necessary (i) to prevent an abuse of process of any court or (ii) otherwise to secure the ends of justice.

15. Learned counsel has relied upon the judgment of Hon'ble Apex Court in the case of **Inder Mohan Goswami & Ors. v. State of Uttaranchal & Ors.** Reported in **(2007) 12 SCC 1** (Para 24 to 26)

16. It is submitted that on perusal of the protest petition as well as the statement of complainant, it would appear that he has not stated anything which may even remotely suggest making out a *prima-facie* case against this petitioner save and except that the name of this petitioner has been mentioned in the column of the accused persons, nothing has been stated against him and as such the requirement of Section 204 Cr.P.C. according to which there must be sufficient materials to proceeding against the accused persons, is not satisfied hence, the order issuing summons to the petitioner is liable to be quashed.

17. It is submitted that in the case of **Abhinandan Jha v Dinesh Mishra** reported in **AIR 1968 SC 117** the Hon'ble court has held that the



cognizance is taken of an offence and not of the offender and an accused may not get aggrieved by an order taking cognizance but he gets aggrieved only when a summon is issued against him. In the present case, thus, the petitioner is aggrieved by the order issuing summons to him.

Submissions of Respondent No. 3

18. On the other hand, Mr. Dayashankar Prasad Sinha, learned Advocate representing the respondent no. 3 has opposed the application for quashing of the order taking cognizance and issuance of summons against the petitioner. A counter affidavit has been filed on behalf of respondent no. 3. In the counter affidavit the sole contention of respondent no. 3 is that there is no malicious prosecution launched by him and that he had brought sufficient material in course of enquiry. It is his submission that the petitioner shall get ample opportunity to place his defence in trial and hence, no interference is required by this Court. In the counter affidavit respondent no. 3 has relied upon the judgment of the Hon'ble Apex Court in the case of **Vijayander Kumar & Ors. V. State of Rajasthan & Anr** reported in **(2014) 3 SCC 389** (para 12), **Rashipal Singh V. State of Uttar Pradesh & Anr.** reported in **(2014) 7 SCC 215** (para 13), **Dhanalakshmi v. R. Prasanna Kumar** reported in **1990 Supp SCC 686** (para 3), **Moti Lal Songara v. Prem Prakash** reported in **(2013) 9 SCC 199** and **Abhinandan Jha** (supra).



19. All these judgments have been relied upon to contend that the inherent power of the High Court to quash a criminal proceeding is to be exercised only in the cases where the complaint does not disclose any offence, is frivolous, vexatious or oppressive. It is not for meticulous analysis of the case and the complaint has to be read as a whole to find out as to whether it discloses a *prima-facie* case or not. The contention is that this Court while exercising its inherent power or extra ordinary writ jurisdiction to quash the criminal proceeding would not act as a trial court.

20. Learned counsel for the State has endorsed the submissions of learned counsel for the respondent no. 3.

Consideration

21. Having heard learned counsel for the parties and on perusal of the records, this Court finds that the first information report giving rise to Alamganj P.S. Case No. 274 of 2013 as well as the allegations made in the protest-cum-complaint petition are based on a basic premise and assertion of the informant/complainant that he is the owner of a piece of land bearing plot no. 1387. He claims that he came in possession over the land and had constructed a boundary wall within which the construction work were going on, on 28.07.2013 the alleged occurrence took place in which the accused persons including this petitioner came there lashed with lathi-danda, demanded a sum of Rs. 10 lakhs from respondent no. 3 and threw away the materials kept there as also gave beating to the labourers. Much before



28.07.2013, the husband of one of the purchasers had lodged a first information report which was not registered on the same day, therefore, he was compelled to move to the court of learned A.C.J.M., Patna City and the learned A.C.J.M. issued a direction on 19.07.2013 itself to Alamganj Police Station to institute, investigate and submit a final report in respect of the alleged occurrence. The Alamganj Police Station registered the said FIR on 29.07.2013 nonetheless it is a matter of record that with regard to the occurrence which had reportedly taken place on 18.07.2013 in which the respondent no. 3 had entered upon the land in question with some anti-social elements and indulged in abuse and beating the wife of informant the investigating officer has found the same true. The Police has investigated the case and found that the FIR lodged by Manoj Kumar being Alamganj P.S. Case No. 276 of 2013 is true and there were sufficient material to proceed against the present respondent no. 3.

22. On the face of the finding of the investigating officer that the respondent no. 3 had indulged in tress-passing over the land and indulging in the alleged occurrence on 18.07.2013 and further finding in course of investigation of Alamganj P.S. Case No. 274 of 2013 that the allegations made therein are not true, there is nothing to even *prima-facie* accept that the respondent no. 3 had constructed a boundary wall on the piece of land bearing plot no. 1387 and on 28.07.2013 he was carrying construction work inside the same being in possession over the said piece of land. The story as



alleged by the informant-complainant claiming his possession over the land is all the more not acceptable as a title suit being Title Suit No. 279 of 2014 is pending in the court of learned Sub-Judge II, Patna City. The order dated 28.07.2016 passed in the said Suit is Annexure '15' to the present application and has not been denied by respondent no. 3. The operative part of the said order of learned Sub-Judge III, Patna City are quoted hereunder for a ready reference:-

“Heard the parties and peruse the case record and find out that the suit of plaintiff in brief is that it is alleged by the plaintiff that she is the owner and possessor of 1.5 katha land of plot number 1387(part), Khata no.123, tauzi no. 293, thana no. 11, situated at Sandalpur, police station Alamganj, district Patna described in schedule 1 of the plaint and the said property was recorded in C.S. Khatiyani in the name of raiyat Nirmal Mahto under the jamindari of Babu Jodhan Prasad Singh Mauar and the plot number 1387 has been recorded 38 decimal and the descendant of Nirmal Mahto, Shiv Lakhan Mahto and Sunita Devi executed a memorandum of oral sale in favour of Savitri Devi on 26.6.1947 and she got her name mutated and paid rent thereafter and came in possession over the said property and she created 10 small plots of different dimensions and areas in the said property of plot number 1387 and a gap of 6 feet wide land for passage in the middle of the said plot was left and after creating small plots Savitri Devi executed and registered 10 sale deed to different persons including the vendors of this plaintiff Geeta Devi and Kiran Bala and most of the vendees have constructed their house over their respective purchased plots and later on Geeta Devi sold her entire purchased portion to the plaintiff i.e. 1152 square feet by registered sale deed dated 7.1.2011 whereas Kiran Bala



executed sale deed with respect to part portion i.e. 558 ft² by deed number 866 of her purchased property in favour of the plaintiff and thereafter the plaintiff became owner of altogether 1711 ft² of plot number 1387 and got her name mutated vide mutation case number 1584/4 of 2010-11 and Jamandi no. 11278/8449 was created in her name and on the other hand, the sale deed of the defendants is of year 2002 and she has illegally got her name mutated in the year 2012 that is after a gap of ten years from the date of her purchase which creates suspicion on the sanctity of her sale deed and on perusal of C.S. Map it appears that the defendant number 1 appeared to have purchased plot number 1389 belonging to other and she has not purchased plot number 1387 of the plaintiff and hence the property purchased by the defendant is separate and distinct property. On the other hand, the case of the defendant in brief is that the suit property belonged to the estate of Jodhan Prasad Singh and during C.S. operation one Nirmal Mahto was in cultivating possession of the suit plot on year to year basis and on the expiry of the period of one year of cultivation he was ousted from it, though his name was recorded in the Khatian as raiyat where of by the authority of the survey the title of Jodhan Singh had never been effected with such a wrong entry of name of Nirmal Mahto at any point of time and the said Jodhan Singh died, leaving behind four sons and during partition amongst his heirs the entire plots of tauzi no. 293, having area 15.5 decimal had been allotted to Ashok Kumar Singh s/o late Bindeshwari Prasad Singh and he mutated his name in the year 1969 vide Jamabandi no. 176 and rent receipts had been issued in his name and has sold it to the vendor of the defendant number 1 under registered deed number 1066 on 05.02.1990 and put the vendee in possession and the vendor of defendant number 1 namely Nav Trimurty Sahkari Grih Nirman Society Limited has got his name mutated and later on executed and registered the sale deed through its



secretary under registered sale deed dated 9.1.2002 and put the defendant number 1 in peaceful possession and since then she has been coming in possession of purchased schedule A property and because the said property was full of water and was useless when it was purchased and hence the defendant number 1 had not got her name mutated although she applied for it before the circle officer, Patna and she applied afresh for the same in the year 2012 before the circle officer, Patna and on the basis of her application mutation case number 906/4 of 2012-13 was initiated and her name was mutated under order dated 1.10.2012 and Jamanbdi No. 13229 was created in her name and she has been paying rent thereafter and she also raised boundary wall around her land. Considering the injunction petition, the show cause and the pleadings of the parties. It is evident that the plaintiff filed the present suit on the ground that she purchased the said property in the year 2011 from Geeta Devi and Kanchan Bala who purchased the same from Savitri Devi and Savitri Devi obtained the said property from the descendants of Nirmal Mahto, whose name was recorded in the Cadastral survey khatian as raiyat and the plaintiff after purchasing the same got her name mutated in the same year and has been paying revenue to the state of Bihar and on the other hand, the defence and the counter claim of the defendant number 1 is that she has purchased the said property from Nav Trimurti Sahkari Grih Nirman Samiti Ltd. and the said Grih Nirman Samiti Ltd. obtained the said property from Ashok Prasad Singh Mauar who obtained the same by way of partition amongst his family members . The defendant number 1 has purchased the property in the year 2002 but she got her name mutated before the Circle Officer, Patna only in the year 2012 that is after ten years and no reasonable cause has been given by the defendants for such delay of 10 years. It is now a matter of trial to go through in depth of the genuineness of the documents submitted by the



parties to decipher the fact that who actually got the perfect right and title with respect to the suit property, but at the present juncture it appears from the facts and circumstances of the case that the case prima facie lies in favour of the plaintiff and definitely if the suit property is alienated or disposed off by the defendant number 1 it would incur irreparable loss to the plaintiff. The defendant number 1 also agrees that the suit property must be preserved till the disposal of the suit. On the basis of the discussion made above, the defendants are directed not to interfere, in the suit property and at the same time directed the defendants not to alienate or do anything which can cause damage to the suit property till the disposal of the present suit and as such the injunction petition filed by the plaintiff is hereby allowed. It is further ordered that the findings of the present injunction petition would have no bearing on the final adjudication of the present suit.

Put up the record for hearing under section 89 of CPC and the parties are directed to appear physically on 9/8/16”

(underline is mine)

23. It is a matter of record that in the title suit the right title and interest of the respondent no. 3 who his defendant no. 1 in the suit is under challenge and is subject matter of adjudication. An injunction is operating against him. In such circumstance by filing a protest-cum-complaint petition and simply reiterating his case as mentioned in the FIR, the informant/complainant cannot be said to have brought a *prima-facie* case for issuance of summons by learned S.D.J.M., Patna City. In the protest petition and statement of the complainant no act and omission has been alleged against the petitioner so as to constitute the offences alleged under Sections 323, 448 and 427/34 of the Indian Penal Code.



24. This Court is willing to accept the submission of learned counsel for the petitioner that the learned S.D.J.M., Patna City has while passing the impugned order on 21.03.2016 acted in a routine and mechanical manner as no sufficient material has been indicated either in the protest petition or in the statement on oath of the complainant to proceed against the petitioner. The allegations are too general, vague and are improbable when seen in the background of the aforementioned facts particularly that investigation of Alamganj P.S. Case No. 276 of 2013 has revealed that what has been alleged against respondent no. 3 is true. This also leads to conclude that a pure and simple civil dispute between the parties have been tried to be given a colour of criminal proceeding.

25. Learned counsel for respondent no. 3 has contended that this Court while exercising its extra ordinary power need not go into meticulous analysis of the allegations and it should not hold a trial. This Court agrees with the submission of learned counsel for the respondent no. 3 on the well settled proposition of law enunciated in several judicial pronouncements of the Hon'ble Apex Court. This Court would therefore, definitely restrain itself from meticulously examining the allegations made in the protest petition. This Court has discussed hereinabove the materials which are available on the record, those are clinching and uncontroverted materials and therefore, the Court has referred those materials in view of the judgment



of the Hon'ble Apex Court in the case of **Rajiv Thapar** (supra) paragraph 29 of the said judgments reads as under:

“29.The issue being examined in the instant case is the jurisdiction of the High Court under Section 482 CrPC, if it chooses to quash the initiation of the prosecution against an accused, at the stage of issuing process, or at the stage of committal, or even at the stage of framing of charges. These are all stages before the commencement of the actual trial. The same parameters would naturally be available for later stages as well. The power vested in the High Court under Section 482 CrPC, at the stages referred to hereinabove, would have far-reaching consequences inasmuch as it would negate the prosecution's/complainant's case without allowing the prosecution/complainant to lead evidence. Such a determination must always be rendered with caution, care and circumspection. To invoke its inherent jurisdiction under Section 482 CrPC the High Court has to be fully satisfied that the material produced by the accused is such that would lead to the conclusion that his/their defence is based on sound, reasonable, and indubitable facts; the material produced is such as would rule out and displace the assertions contained in the charges levelled against the accused; and the material produced is such as would clearly reject and overrule the veracity of the allegations contained in the accusations levelled by the prosecution/complainant. It should be sufficient to rule out, reject and discard the accusations levelled by the prosecution/complainant, without the necessity of recording any evidence. For this the material relied upon by the defence should not have been refuted, or alternatively, cannot be justifiably refuted, being material of sterling and impeccable quality. The material relied upon by the accused should be such as would persuade a reasonable person to dismiss and condemn the actual basis of the accusations as false. In such a situation, the judicial



conscience of the High Court would persuade it to exercise its power under Section 482 CrPC to quash such criminal proceedings, for that would prevent abuse of process of the court, and secure the ends of justice.”

26. Although learned counsel for the petitioner has relied upon a number of judgments, for the purpose of this case this Court would refer certain paragraphs from some of those judgments. In the case of **Bhajan Lal** (supra) the Hon’ble Apex Court in paragraph 102 held that though it may not be possible to provide a clearly defined and inflexible guidelines wherein an inherent power has been exercised by the High Court, certain categories of cases have been provided by way of illustrations wherein such powers should be exercised. Paragraph 102 from the judgment of the Hon’ble Apex Court is quoted hereunder for a ready reference:

“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 extra-ordinary 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 F.I.R. 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 F.I.R. 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. In the case of **State of Karnataka v. L. Muniswamy** reported in **(1977) 2 SCC 699** the Hon'ble Apex Court in paragraph '7' has held 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.....”

28. In the case of **Inder Mohan Goswami** the Hon'ble Supreme Court has heavily deprecated the growing tendency of converting a purely civil dispute in a criminal proceeding. In paragraph 24 to 26, 29 and 30 of the Hon'ble Apex Court judgment are quoted hereunder for a ready reference:

“**24.** Inherent powers under Section 482 CrPC though wide have to be exercised sparingly, carefully and with great caution and only when such exercise is justified by the tests specifically laid down in this section itself. Authority of the court exists for the advancement of justice. If any abuse of the process leading to injustice is brought to the notice of the court, then the Court would be justified in preventing



injustice by invoking inherent powers in absence of specific provisions in the Statute.

25. Reference to the following cases would reveal that the courts have consistently taken the view that they must use this extraordinary power to prevent injustice and secure the ends of justice. The English courts have also used inherent power to achieve the same objective. It is generally agreed that the Crown Court has inherent power to protect its process from abuse. In *Connelly v. DPP*¹ Lord Devlin stated that where particular criminal proceedings constitute an abuse of process, the court is empowered to refuse to allow the indictment to proceed to trial. Lord Salmon in *DPP v. Humphrys*² stressed the importance of the inherent power when he observed that it is only if the prosecution amounts to an abuse of the process of the court and is oppressive and vexatious that the judge has the power to intervene. He further mentioned that the court's power to prevent such abuse is of great constitutional importance and should be jealously preserved.

26. In *R.P. Kapur v. State of Punjab*³ this Court summarized some categories of cases where inherent power can and should be exercised to quash the proceedings:

- (i) where it manifestly appears that there is a legal bar against the institution or continuance of the proceedings;
- (ii) where the allegations in the first information report or complaint taken at their face value and accepted in their entirety do not constitute the offence alleged;
- (iii) where the allegations constitute an offence, but there is no legal evidence adduced or the evidence adduced clearly or manifestly fails to prove the charge.”

29. In *Chandrapal Singh v. Maharaj Singh*⁵ in a landlord and tenant matter where criminal proceedings had been initiated, this Court observed in para 1 at SCC p.467 as under:

“A frustrated landlord after having met his Waterloo in the hierarchy of civil courts, has further enmeshed the tenant in a frivolous criminal prosecution which prima facie appears to be an abuse of the process of law. The facts when stated are so telling that the further discussion may appear to be superfluous.”

1. 1964 AC 1254; (1964) 2 WLR 1145 : (1964) 2 ALL ER 401(HL)
2. 1977 AC 1 ; (1976) 2 WLR 857 : (1976) 2 ALL ER 497 [HL (E)]
3. AIR 1960 SC 866
5. (1982) 2 SCC 466 : 1982 SCC (Cri) 249



30. The court noticed that the tendency of perjury is very much on the increase. Unless the courts come down heavily upon such persons, the whole judicial process would come to ridicule. The court also observed that chagrined and frustrated litigants should not be permitted to give vent to their frustration by cheaply invoking jurisdiction of the criminal court.”

29. The contention of learned counsel for respondent no. 3 is that at this stage this Court need not go into the meticulous analysis of the complaint and the judgments of the Hon’ble Apex Court has been relied upon as recorded hereinabvoe to contend that the inherent power of this Court should be exercised only in cases where the complaint does not disclose any offence or his frivolous, vexatious or oppressive.

30. This Court has examined the whole complaint as a whole keeping in mind the propositions laid down by the Hon’ble Apex Court. This Court reaches to an irresistible conclusion that in order to save his own skin respondent no. 3 came out with a defence as also to harass his opponent such as the petitioner the informant /complainant (respondent no. 3) lodged Alamganj P.S. Case No. 274 of 2013. About the occurrence dated 18.07.2013 an FIR was lodged by Manoj Kumar, though the same was not registered on the same day and despite order of the learned A.C.J.M., Patna City passed on 19.07.2013 it was entered on 29.07.2013, prior to lodging the case of Manoj Kumar, the case of this respondent no. 3 was registered showing a date 28.07.2013 (Sunday) but the FIR was sent to the court of learned A.C.J.M.,



Patna City on 30.07.2013 (Tuesday). Why it was not sent on Monday indicates a long way what were going on in the Police Station. The FIR lodged by Manoj Kumar was registered ten days after the order of the learned A.C.J.M. on 29.07.2013 but the allegations mentioned therein about the occurrence of 18.07.2013 against respondent no. 3 has been found to be true.

31. All these are admitted factual position appearing from the records and have remained uncontroverted by respondent no. 3. This Court can therefore, safely rely upon these facts and material without holding any trial or going into meticulous details of the allegations that the very lodgment of the first information report giving rise to Alamganj P.S. Case No.274 of 2013 is nothing but a frivolous and vexatious kind of FIR with sole intention to harass the petitioner. The FIR having been lodged with malafide intention, continuation of a proceeding arising from the same based on protest-cum-complaint petition is nothing but an abuse of the process of the court. It is covered under one of the categories in **Bhajan Lal** case (supra). The ends of justice require that such malafide, frivolous and vexatious criminal proceeding be quashed. Accordingly, this Court hereby set-aside the impugned order dated 21.03.2016 passed by learned S.D.J.M., Patna City, Patna in complaint case no. 1485 of 2014 arising out of Alamganj P.S. Case No. 274 of 2013 insofar as it relates to the petitioner. The criminal proceeding as against the petitioner stands quashed.

32. It is made clear that reference of the ongoing civil proceeding in respect of the land in question or any observation based thereon shall not be



taken as any opinion of this Court on the merit of the civil suits or proceedings between the parties.

33. This application stands allowed.

(Rajeev Ranjan Prasad, J)

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AFR/NAFR	
CAV DATE	06.03.2020
Uploading Date	01.06.2020
Transmission Date	01.06.2020

Note: The ordersheet duly signed has been attached with the record. However, in view of the present arrangements, during Pandemic period all concerned shall act on the basis of the copy of the order uploaded on the High Court website under the heading 'Judicial Orders Passed During The Pandemic Period'.

