

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.25977 of 2018

Arising Out of PS. Case No.-220 Year-2016 Thana- RUPAULI District- Purnia

Md. Fazle Ali @ Rizvi @ Phajlay @ Rizwi S/o Late Zakiruddin , R/o Vill.-
Chapahari, P.S.- Rupauli, District- Purnea.

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Md. Shahab Khalil, Advocate

For the Opposite Party/s : Sri Sanjay Kumar Pandey, APP

CORAM: HONOURABLE MR. JUSTICE CHANDRA SHEKHAR JHA
ORAL ORDER

2 04-08-2022 1. Heard learned counsel for the petitioner and learned
APP for the State.

2. That this is an application for quashing the order dated 05.01.2018 in S. Special Case No. 70/16 (arising out of Rupauli P.S. Case No. 220 of 2016) passed by the Special Judge, Purnea, whereby and whereunder the learned 1st Additional Sessions Judge, Purnea purported to take cognizance of the offences under Sections 341, 323, 354 120B and 34 of the Indian Penal Code and Section 18 of the POCSO Act, 2012.

3. During pendency of the present application, an application dated 25.03.2021 under Section 227 of Cr.P.C. for discharging the petitioner from the charges has been filed, whereafter hearing the parties, the learned Additional District



and Sessions Judge-cum-Special Court (POCSO), Purnea by order dated 07.09.2021 held that direct charges under Sections 225 and 506 of the Indian Penal Code is made out against the petitioner, while rejecting the discharge petition.

5. The brief case of the prosecution, as set out through written complaint, is that on 18.10.2016, informant alongwith his minor daughter, namely 'X' (name with-held), while returning from "*Chapahari Hat*" alongwith cows, and as so, when arrived at Vimal chowk, taking a breakfast, two unknown boys started to assault the informant. It is further alleged that during the course of assault, minor daughter of the informant was also molested. It is also alleged thereof, that owner of "*Chapahari Hat*" came thereof, and rescued two boys, who were detained by local persons, and run away. Accused persons could not take away motorcycle, which was seized by the informant and produced before local police.

6. Learned counsel for the petitioner submitted that the order dated 07.09.2021 is illegal and without jurisdiction. It is submitted that from bare reading of the allegations made in the F.I.R., it is evident that no ingredients to constitute an offence under Section 225 of the Indian Penal Code is made out. It is submitted that petitioner, at worst, made an attempt to



rescue the detained persons but left the place without rescuing. It is submitted that since, attempt to commit offence under Section 225 of the Indian Penal Code is not an offence and, as such, the learned Trial Court erred in adding charge under Section 225 of the Indian Penal Code. It is also submitted by learned counsel that, no offence is made out against the petitioner as alleged rescue of two boys were not from police custody. While concluding the argument, learned counsel submitted that as petitioner was allowed to hold “*Hat*” on any day in terms of Hon’ble Court order dated 03.03.2016 as passed in CWJC No. 2811 of 2015, present prosecution is nothing but abuse of the process of the Court, as same has been initiated with *mala fide* intention, to harass and defame the petitioner.

7. Learned APP, while appearing on behalf of the State, submitted that petitioner alleged to commit cognizable and non-bailable offence, where detention is lawful in view of Section 43 of the Cr.P.C. It is further submitted that attempt to rescue from lawful detention is also an offence u/s 225 of the Indian Penal Code. Learned APP further pointed out that learned Trial Court after going through the entire material, collected during investigation, reject the petition u/s 227 of the Cr.P.C., pressed by petitioner.



8. It would be appropriate to reproduce Section 225 of the Indian Penal Code, alongwith Section 43 of the Criminal Procedure Code (Cr.P.C.), for better understanding of the issues involved herewith, as raised through present petition.

Section 225 of the I.P.C. reads as under:

“225. Resistance or obstruction to lawful apprehension of another person.— Whoever intentionally offers any resistance or illegal obstruction to the lawful apprehension of any other person for an offence, or rescues or attempts to rescue any other person from any custody in which that person is lawfully detained for an offence, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both;

or, if the person to be apprehended, or the person rescued or attempted to be rescued, is charged with or liable to be apprehended for an offence punishable with ¹[imprisonment for life] or



imprisonment for a term which may extend to ten years, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine;

or, if the person to be apprehended, or the person attempted to be rescued, is charged with or liable to be apprehended for an offence punishable with death, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine;

*or, if the person to be apprehended or rescued, or attempted to be rescued, is liable under the sentence of a Court of Justice, or by virtue of a commutation of such a sentence, to ¹[imprisonment for life] ²[***] ³[***] ⁴[***] or imprisonment, for a term of ten years or upwards, shall be punished with imprisonment of either description for a term which may extend to*



*seven years, and shall also be liable to fine;
or, if the person to be apprehended
or rescued, or attempted to be rescued, is
under sentence of death, shall be punished
with ¹[imprisonment for life] or
imprisonment of either description for a
term not exceeding ten years, and shall also
be liable to fine.”*

Section 43 of the Cr.P.C. reads as under:

*“43. Arrest by private person and
procedure on such arrest.*

*(1) Any private person may arrest
or cause to be arrested any person who in
his presence commits a non- bailable and
cognizable offence, or any proclaimed
offender, and, without unnecessary delay,
shall make over or cause to be made over
any person so arrested to a police officer, or,
in the absence of a police officer, take such
person or cause him to be taken in custody
to the nearest police station.*

(2) If there is reason to believe



that such person comes under the provisions of section 41, a police officer shall re- arrest him.

(3) If there is reason to believe that he has committed a non- cognizable offence, and he refuses on the demand of a police officer to give his name and residence, or gives a name or residence which such officer has reason to believe to be false, he shall be dealt with under the provisions of section 42; but if there is no sufficient reason to believe that he has committed any offence, he shall be at once released.”

9. It would be appropriate to reproduce the paragraph no. 102 of the Apex Court decision in the case of ***State of Haryana and Others vs. Bhajan Lal and Others reported in 1992 Supp (1) Supreme Court Cases 335***, which reads as under:

“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 informant 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 persons 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.”



10. It is a well settled law that power of quashing u/s 482 of the Criminal Procedure Code (Cr.P.C.) should be exercised sparingly with circumspection, in the rarest of rare case, and that too only where allegations levelled in the F.I.R. and other material, if any, accompanying the F.I.R. do not disclose a cognizable offence or where the allegations made in the F.I.R. are so absurd and inherently improbable that on the basis of the same, no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused. Moreover, while examining on F.I.R., quashing of which is sought, the Court can not embark upon an inquiry as to the reliability or genuineness or otherwise of the allegations made in the F.I.R. and the criminal proceedings ought not to be scuttled at the initial stage, as it was held by the Hon'ble Apex Court in the matter ***“Mahendra K.C. vs. State of Karnataka reported in (2022) 2 SCC 129.***

11. The Hon'ble Supreme Court held in the matter of ***Sajjan Kumar vs. C.B.I. reported in (2010) 9 SCC 368***, where paragraph no. 24 of the said judgement reads as under:

“24. At the stage of framing of charge under Section 228 Cr.P.C. or while considering the discharge petition filed



under Section 227, it is not for the Magistrate or the Judge concerned to analyse all the materials including pros and cons, reliability or acceptability, etc. It is at the trial, the Judge concerned has to appreciate their evidentiary value, credibility or otherwise of the statement, veracity of various documents and is free to take a decision one way or the other.”

12. Now coming to the present case, it appears from bare perusal of Section 225 of the Indian Penal Code, that **“attempt to rescue”** in itself is sufficient to constitute offence under this provision. It appears that lawful detention is not police custody only, as argued by learned counsel for the petitioner, as Section 43 of the Cr.P.C. empowers private person to arrest any person, who, in his presence commits a non-bailable and cognizable offence. Therefore, detention does not mean a police custody only. It further appears that there is sufficient material to frame charge under Sections 225 and 506 of the Indian Penal Code.

13. In view of the version of the informant, as set out through written complaint and also in view of the ratio laid



down in the matter of **Sajjan Kumar’s case** (supra), there is no occasion to exercise the extraordinary power under Section 482 of the Cr.P.C. to quash the order dated 05.01.2018 passed by Special Judge, Purnea in connection with Rupauli P.S. Case No. 220 of 2016.

14. Accordingly, the present quashing petition stands dismissed.

(Chandra Shekhar Jha, J)

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