

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.29799 of 2018

Arising Out of PS. Case No.-74 Year-2016 Thana- TARABARI District- Araria

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1. Najib, son of Abbas,
 2. Shafiq, son of Abbas,
 3. Abbas, Son of Late Idris,

All are residents of Village- Pairvakhudi, P.S.- Tarabari, District- Purnea.

... .. Petitioner/s

Versus

1. State of Bihar
2. Md. Israfil, Son of Late Salim, residents of Village- Pairvakhudi, P.S.- Tarabari, District- Purnea.

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Ramesh Kumar Singh, Advocate
For the Opposite Party/s : Mr. Upendra Kumar, APP

CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR JHA
ORAL JUDGMENT

Date : 28-07-2022

Heard learned counsel for the petitioner and learned
APP for the State.

The instant petition has been filed for quashing of FIR
arising out of Tarabari P.S. Case No. 74 of 2016 registered under
Sections 366 (A)/34 of the Indian Penal Code.

As per prosecution case, the informant of this case
gave a written report to the SHO, P.S. Tarabari, Araria alleging
that the petitioners kidnapped his minor daughter and petitioner
Najib was having an evil eye on his daughter.

Learned counsel for the petitioners submits that for an



occurrence of 22.08.2016, the FIR has been registered on 30.08.2016, i.e., after delay of 8 days for which there is no explanation. The learned counsel further submits that the case is of love affair between the daughter of the informant and the petitioner no. 1 and in her statement recorded under Section 164 Cr.P.C., the daughter of the informant stated that she went away with petitioner no.1 and has got married and after solemnization of marriage, she went to the house of her aunt. She further stated that she was not kidnapped. She also declared her age to be 19 years. The medical board assessed the age of the daughter of the informant is about 16-17 years, which is above the age of puberty under the Muslim Law. In the aforesaid facts and circumstances, no offences under Section 366(A)/34 of the Indian Penal Code is made out against these petitioners. The learned counsel relied on a decision of the Hon'ble Supreme Court in the case of ***State of Haryana and Ors. vs. Bhajan Lal and Ors., 1992 AIR 604***, submitting that the extra ordinary power under Section 482 of the Code of Criminal Procedure can be exercised for preventing the abuse of process of any court or otherwise to secure the ends of justice. He further submits that this power can be exercised to quash the proceedings when there is express legal bar established in any provisions of the Code of



Criminal Procedure 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 Cr.P.C. or the concerned Act, providing efficacious redress for the grievance of the aggrieved party. Thus, learned counsel submits that in the light of the aforementioned judgment of the Hon'ble Supreme Court, the FIR bearing Tarabari P.S. Case No. 74 of 2016 is to be quashed as the continuance of the proceeding will be misuse of the process of the court.

Learned APP opposes the submission made on behalf of the petitioners. Learned APP submits that there is no express bar under any of the legal provisions, which would render the FIR liable to be quashed and contested question of facts can not be made ground for quashing the FIR.

Perused the records.

From perusal of record and having regard to the submission made hereinabove, it is apparent that the petitioners challenged the registration of FIR on the basis of subsequent facts arising in this case, namely the statement recorded under Section 164 Cr.P.C. The power under Section 482 Cr.P.C. is an extra ordinary power and the Supreme Court in the *State of*



Haryana and Ors. vs. Bhajan Lal and Ors. (supra) has clearly held that this power is to be exercised very sparingly and in rarest of cases. It is not to be used at the throw of the hat in each and every case. More so, it cannot be used to appreciate and weigh the contesting facts. It has been held in the same decision that when there is contesting claim, the jurisdiction of this Court should not be exercised. The Hon'ble Apex Court has enumerated the list of cases wherein the extraordinary power under article 226 and inherent power under Section 482 of the Code of Criminal Procedure could be exercised either to prevent the abuse of the process of any court or otherwise to secure the ends of justice.

“(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.”

Again coming to facts of the present case, I do not think that the case of the petitioners is covered any of the seven guidelines enumerated by the Hon'ble Supreme Court. If the petitioners have any case in their favour, they are at liberty to raise all issues before the learned court below. The petitioners have every



opportunity to raise all issues at the stage of cognizance, framing of charge even at the time of trial during recording of evidence. The Hon'ble Supreme Court in the case of *State of Haryana and Ors. vs. Bhajan Lal (Supra)* has further held that the court will not be justified in embarking upon an inquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR or the complaint and that the extraordinary or inherent powers do not confer an arbitrary jurisdiction on the court to act according to its whim or caprice.

So, having regard to the facts of the present case, in my considered opinion, the facts constitute a cognizable offence justifying the registration of the case and the same does not fall under any of the categories of cases enumerated by the Hon'ble Supreme Court in the case of *State of Haryana and Ors. vs. Bhajan Lal (supra)*. So, there is no occasion for exercise of of inherent powers of the Court under Section 482 Code of Criminal Procedure to quash the FIR.

Hence, the present petition is dismissed.

(Arun Kumar Jha, J)

Rajnish/-

AFR/NAFR	N.A.F.R.
CAV DATE	N.A.
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