

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.11087 of 2021

Arising Out of PS. Case No.-187 Year-2019 Thana- KONCH District- Gaya

KAPIL YADAV @ KAPIL DEV YADAV S/o Late Dev Lal Yadav @ Badri
Yadav Resident of Village- Pradhana, P.S.- Konch, District- Gaya.

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr.Manisha Prakash

For the Opposite Party/s : Mr.A.G

CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH
ORAL JUDGMENT

Date : 18-04-2022

The present petition has been filed for quashing the FIR along with the entire criminal proceeding pertaining to Konch P.S. Case No. 187/2019, G.R. No. 3115/2019, pending before the learned court of ACJM-IIIrd, Gaya.

2. The brief facts of the case are that upon a written report of the informant, namely Uma Shankar Yadav, the FIR in question bearing Konch P.S. Case No. 187/2019 was registered on 16.06.2019 under Sections 147, 148, 149, 341, 323, 337, 307, 326, 379, 504 of the Indian Penal Code and Section 27 of the Arms Act. The allegation levelled by the informant is that at about 8:30 AM in the morning of 16.6.2019, while he



along with his nephew Pankaj Kumar, was standing at the kiosk (*gumti*) of co-villager, Shiv Pujan Yadav and his grandson, namely Raju Kumar was also sitting there from before, the accused persons had arrived there and had started abusing the nephew and grandson of the informant, whereupon the grandson of the informant had protested and then the petitioner herein had arrived there in an inebriated condition and had also started abusing them, whereafter the petitioner had taken out a pistol from his waist and had pointed it on the temple of the nephew of the informant as also had fired gunshot resulting in him sustaining injuries. It is also alleged that thereafter, the accused persons had also assaulted the informant and others resulting in them receiving grave injuries.

3. The learned counsel for the petitioner has submitted that the petitioner had filed an anticipatory bail petition before this Hon'ble Court bearing Criminal Miscellaneous No. 78939 of 2019, which was heard and vide order dated 4.12.2019, case diary was called for, as is apparent from the



order dated 7.12.2019 passed by the learned court below. The learned counsel for the petitioner has also submitted that though the anticipatory bail petition of the petitioner was pending before this Court, however, warrant was directed to be issued by the learned court below vide order dated 13.1.2020, whereafter the Investigating Officer had prayed before the learned court below to issue advertisement / proclamation against the petitioner, which was allowed by the learned court below, vide order dated 22.2.2020. It is also submitted that thereafter, process was directed to be issued under Section 83 of the Code Of Criminal Procedure, 1973, vide order dated 29.9.2020, passed by the learned court below. Thus, the submission of the learned counsel for the petitioner, in nutshell, is that despite the petitioner being engaged in availing judicial remedy before this Hon'ble Court regarding obtaining anticipatory bail, the Investigating Officer as also the learned court below had engaged in uncalled for coercive measures to ensure that the petitioner is arrested,



hence, the conduct of the Investigating Officer as also the learned court below depicts their biasness in the matter, consequently, the entire criminal proceedings are liable to be quashed.

4. I have heard the learned counsel for the parties, perused the materials on record and gone through the FIR in question as also the entire order-sheet of the case, as annexed to the present petition. At the outset, it may be pertinent to mention that the learned Counsel for the petitioner has not advanced any argument either on the issue as to how no case is made out upon a bare reading of the FIR in question or as to why the entire criminal proceeding should be quashed and merely, it has been stated that since the learned court below has acted arbitrarily, the learned court below should be punished and the FIR should be quashed.

5. It is a well-settled law that power of quashing an FIR should be exercised sparingly with circumspection, in the 'rarest of rare case' and that



too only where allegations levelled in the FIR and other materials, if any, accompanying the FIR do not disclose a cognizable offence or where the allegations made in the FIR 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. It is equally a well-settled law that the Court should not thwart any investigation into the cognizable offences inasmuch the police has the statutory right and duty under the relevant provisions of the Code of Criminal Procedure contained in Chapter-XIV thereof to investigate into cognizable offences. Moreover, while examining an FIR, quashing of which is sought, the Court cannot embark upon an inquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR and the criminal proceedings ought not to be scuttled at the initial stage. In this connection, it would be apposite to refer to a judgment rendered by the Hon'ble Apex Court in the case of **Mahendra K.C.**



vs. State of Karnataka, reported in **(2022) 2 SCC 129**, paragraphs no. 19 to 22 whereof are reproduced herein below:-

"19. The High Court has the power under Section 482 to issue such orders as are necessary to prevent the abuse of legal process or otherwise, to secure the ends of justice. The law on the exercise of power under Section 482 to quash an FIR is well-settled. In State of Orissa v. Saroj Kumar Sahoo [(2005) 13 SCC 540], a two-Judge Bench of this Court, observed that :

"8. ... While exercising the powers under the section, the court does not function as a court of appeal or revision. Inherent jurisdiction under the section though wide has to be exercised sparingly, carefully and with caution and only when such exercise is justified by the tests specifically laid down in the section itself. It is to be exercised ex debito justitiae to do real and substantial justice for the administration of which alone the courts exist. Authority of the court exists for advancement of justice and if any attempt is made to abuse that authority



so as to produce injustice, the court has power to prevent abuse. It would be an abuse of process of the court to allow any action which would result in injustice and prevent promotion of justice. In exercise of the powers the court would be justified to quash any proceeding if it finds that initiation/continuance of it amounts to abuse of the process of court or quashing of these proceedings would otherwise serve the ends of justice. When no offence is disclosed by the report, the court may examine the question of fact. When a report is sought to be quashed, it is permissible to look into the materials to assess what the report has alleged and whether any offence is made out even if the allegations are accepted in toto.”

20. *These principles emanate from the decisions of this Court in State of Haryana v. Bhajan Lal [State of Haryana v. Bhajan Lal, 1992 Supp (1) SCC 335] and State of M.P. v. Surendra Kori [State of M.P. v. Surendra Kori, (2012) 10 SCC 155]. In Surendra Kori, this Court observed :*

“14. The High Court in exercise of its



powers under Section 482 CrPC does not function as a court of appeal or revision. This Court has, in several judgments, held that the inherent jurisdiction under Section 482 CrPC, though wide, has to be used sparingly, carefully and with caution. The High Court, under Section 482 CrPC, 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 wide magnitude and cannot be seen in their true perspective without sufficient material.”

21. *In Bhajan Lal [State of Haryana v. Bhajan Lal, 1992 Supp (1) SCC 335] , this Court laid down the principles for the exercise of the jurisdiction by the High Court in exercise of its powers under Section 482 CrPC to quash an FIR. Ratnavel Pandian, J. laid down the limits on the exercise of the power under Section 482 CrPC for quashing the FIR and observed :*

“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 CrPC 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 FIR do not



disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) CrPC except under an order of a Magistrate within the purview of Section 155(2) CrPC.

(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) CrPC.

(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 Act concerned (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."

The judgment in Bhajan Lal [State of Haryana v. Bhajan Lal, 1992 Supp (1) SCC 335] has been recently relied on by this Court in State of Telangana v. Managipet [State of Telangana v. Managipet, (2019) 19 SCC 87 : (2020) 3 SCC (Cri) 702] .

22. *Based on the above precedent, the High Court while exercising its power under Section 482 CrPC to quash the FIR instituted against the second respondent-accused should have applied the following two tests :*



(i) whether the allegations made in the complaint, prima facie constitute an offence; and (ii) whether the allegations are so improbable that a prudent man would not arrive at the conclusion that there is sufficient ground to proceed with the complaint. Before proceeding further, it is imperative to briefly discuss the law on the abetment of suicide to determine if a prima facie case under Section 306 IPC has been made out against the respondent-accused."

6. It would be apropos to refer to a judgment rendered by the Hon'ble Apex Court in the case of State of **Telangana vs. Habib Abdullah Jeelani**, reported in **(2017) 2 SCC 779**, paragraphs no. 13 to 15 whereof are reproduced herein below:-

"13. *There can be no dispute over the proposition that inherent power in a matter of quashment of FIR has to be exercised sparingly and with caution and when and only when such exercise is justified by the test specifically laid down in the provision itself. There is no denial of the fact that the power under Section 482 CrPC is very wide but it needs no special emphasis to state that conferment of wide power requires the Court*



to be more cautious. It casts an onerous and more diligent duty on the Court.

14. *In this regard, it would be seemly to reproduce a passage from Kurukshetra University [Kurukshetra University v. State of Haryana, (1977) 4 SCC 451 : 1977 SCC (Cri) 613] wherein Chandrachud, J. (as his Lordship then was) opined thus : (SCC p. 451, para 2)*

“2. It surprises us in the extreme that the High Court thought that in the exercise of its inherent powers under Section 482 of the Code of Criminal Procedure, it could quash a first information report. The police had not even commenced investigation into the complaint filed by the Warden of the University and no proceeding at all was pending in any court in pursuance of the FIR. It ought to be realised that inherent powers do not confer an arbitrary jurisdiction on the High Court to act according to whim or caprice. That statutory power has to be exercised sparingly, with circumspection and in the rarest of rare cases.”

15. *We have referred to the said decisions only to stress upon the issue, how the*



exercise of jurisdiction by the High Court in a proceeding relating to quashment of FIR can be justified. We repeat even at the cost of repetition that the said power has to be exercised in a very sparing manner and is not to be used to choke or smother the prosecution that is legitimate. The surprise that was expressed almost four decades ago in Kurukshetra University case [Kurukshetra University v. State of Haryana, (1977) 4 SCC 451 : 1977 SCC (Cri) 613] compels us to observe that we are also surprised by the impugned order."

7. It would also be apt to refer to a recent judgment dated 13.04.2021, rendered by the Hon'ble Apex Court in the case of **M/s Neeharika Infrastructure Pvt. Ltd. vs. State of Maharashtra & Others** (Criminal Appeal No. 330 of 2021), wherein the Hon'ble Apex Court has laid down certain guidelines in paragraph no. 23 thereof, which is reproduced herein below:-

"23. In view of the above and for the reasons stated above, our final conclusions on the principal/core issue, whether the High Court would be justified in passing an interim order



of stay of investigation and/or “no coercive steps to be adopted”, during the pendency of the quashing petition under Section 482 Cr.P.C and/or under Article 226 of the Constitution of India and in what circumstances and whether the High Court would be justified in passing the order of not to arrest the accused or “no coercive steps to be adopted” during the investigation or till the final report/chargesheet is filed under Section 173 Cr.P.C., while dismissing/disposing of/not entertaining/not quashing the criminal proceedings/complaint/FIR in exercise of powers under Section 482 Cr.P.C. and/or under Article 226 of the Constitution of India, our final conclusions are as under:

- i) Police has the statutory right and duty under the relevant provisions of the Code of Criminal Procedure contained in Chapter XIV of the Code to investigate into a cognizable offence;*
- ii) Courts would not thwart any investigation into the cognizable offences;*
- iii) It is only in cases where no cognizable offence or offence of any kind is disclosed in the first information*



report that the Court will not permit an investigation to go on;

iv) The power of quashing should be exercised sparingly with circumspection, as it has been observed, in the 'rarest of rare cases (not to be confused with the formation in the context of death penalty).

v) While examining an FIR/complaint, quashing of which is sought, the court cannot embark upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR/complaint;

vi) Criminal proceedings ought not to be scuttled at the initial stage;

vii) Quashing of a complaint/FIR should be an exception rather than an ordinary rule;

viii) Ordinarily, the courts are barred from usurping the jurisdiction of the police, since the two organs of the State operate in two specific spheres of activities and one ought not to tread over the other sphere;

ix) The functions of the judiciary and the police are complementary, not



overlapping;

x) Save in exceptional cases where non-interference would result in miscarriage of justice, the Court and the judicial process should not interfere at the stage of investigation of offences;

xi) Extraordinary and inherent powers of the Court do not confer an arbitrary jurisdiction on the Court to act according to its whims or caprice;

xii) The first information report is not an encyclopaedia which must disclose all facts and details relating to the offence reported. Therefore, when the investigation by the police is in progress, the court should not go into the merits of the allegations in the FIR. Police must be permitted to complete the investigation. It would be premature to pronounce the conclusion based on hazy facts that the complaint/FIR does not deserve to be investigated or that it amounts to abuse of process of law. After investigation, if the investigating officer finds that there is no substance in the application made by the complainant, the investigating officer may file an appropriate report/summary before the learned



Magistrate which may be considered by the learned Magistrate in accordance with the known procedure;

xiii) The power under Section 482 Cr.P.C. is very wide, but conferment of wide power requires the court to be more cautious. It casts an onerous and more diligent duty on the court;

xiv) However, at the same time, the court, if it thinks fit, regard being had to the parameters of quashing and the self-restraint imposed by law, more particularly the parameters laid down by this Court in the cases of R.P. Kapur (supra) and Bhajan Lal (supra), has the jurisdiction to quash the FIR/complaint;

xv) When a prayer for quashing the FIR is made by the alleged accused and the court when it exercises the power under Section 482 Cr.P.C., only has to consider whether the allegations in the FIR disclose commission of a cognizable offence or not. The court is not required to consider on merits whether or not the merits of the allegations make out a cognizable offence and the court has to permit the investigating agency/police to



investigate the allegations in the FIR;

xvi) The aforesaid parameters would be applicable and/or the aforesaid aspects are required to be considered by the High Court while passing an interim order in a quashing petition in exercise of powers under Section 482 Cr.P.C. and/or under Article 226 of the Constitution of India. However, an interim order of stay of investigation during the pendency of the quashing petition can be passed with circumspection. Such an interim order should not require to be passed routinely, casually and/or mechanically. Normally, when the investigation is in progress and the facts are hazy and the entire evidence/material is not before the High Court, the High Court should restrain itself from passing the interim order of not to arrest or “no coercive steps to be adopted” and the accused should be relegated to apply for anticipatory bail under Section 438 Cr.P.C. before the competent court. The High Court shall not and as such is not justified in passing the order of not to arrest and/or “no coercive steps” either during the investigation or till the



investigation is completed and/or till the final report/chargesheet is filed under Section 173 Cr.P.C., while dismissing/ disposing of the quashing petition under Section 482 Cr.P.C. and/or under Article 226 of the Constitution of India.

xvii) Even in a case where the High Court is prima facie of the opinion that an exceptional case is made out for grant of interim stay of further investigation, after considering the broad parameters while exercising the powers under Section 482 Cr.P.C. and/or under Article 226 of the Constitution of India referred to hereinabove, the High Court has to give brief reasons why such an interim order is warranted and/or is required to be passed so that it can demonstrate the application of mind by the Court and the higher forum can consider what was weighed with the High Court while passing such an interim order.

xviii) Whenever an interim order is passed by the High Court of “no coercive steps to be adopted” within the aforesaid parameters, the High Court must clarify what does it mean by “no



coercive steps to be adopted” as the term “no coercive steps to be adopted” can be said to be too vague and/or broad which can be misunderstood and/or misapplied.

8. Now coming back to the present case, this Court finds that no unusual procedure has been adopted by the learned court below inasmuch as it is apparent from the orders passed by the learned court of ACJM-IIIrd, Gaya in connection with Konch P.S. Case No. 187 of 2019 that the endeavor of the Ld. court below was only to secure the presence of the petitioner, who was absconding since more than a year despite there being no stay of arrest by the Hon'ble High Court, which was necessary for proper investigation of the case, considering the grave nature of allegations levelled against him. Yet another aspect of the matter is that if the petitioner was aggrieved by any of the orders passed by the learned court of ACJM-IIIrd, Gaya, the petitioner could have assailed the same, but none of the orders have ever been assailed, hence, now at this stage, the petitioner cannot turn



around to submit that since the learned court below was taking coercive action for securing the presence of the petitioner, the entire criminal proceedings including the FIR ought to be quashed. It is equally apparent from a bare reading of the FIR that the allegations levelled therein against the petitioner definitely disclose commission of a cognizable offence qua the petitioner herein, hence, the criminal proceeding cannot be scuttled at this stage. It is a trite law that an accused person should be discouraged from preventing the culmination of criminal cases by resorting to uncalled for and unjustified litigation. Consequently, for the reasons mentioned hereinabove as also considering the law laid down by the Hon'ble Apex Court, as discussed in the preceding paragraphs, I do not find any merit in the present petition, hence, the same stands dismissed.

(Mohit Kumar Shah, J)

Ajay/-

AFR/NAFR	AFR
Uploading Date	18.04.2022

