

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.11371 of 2021

Arising Out of PS. Case No.-214 Year-2020 Thana- RAJIVNAGAR District- Patna

SHIV CHANDRA JHA Son of Ram Chandra Jha Resident of Jai Prakash
Nagar, Road No. 2, P.O. and P.S. - Rajiv Nagar, District - Patna.

... .. Petitioner/s

Versus

THE STATE OF BIHAR

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Kunal Tiwary

For the Opposite Party/s : Mr. Yogendra Kumar Singh

CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR SINGH
ORAL ORDER

2 28-04-2022 This application has been filed by the petitioner for quashing the FIR dated 07.07.2020, arising out of Rajeev Nagar PS case No. 214/2020, registered u/s 420, 467, 468, 479, 471/34 of the IPC and u/s 3 of Public Property Defacement Act.

Brief facts giving rise to registration of FIR against this petitioner is that on 07.07.2020 while the informant along with other officials on patrolling duty in course of enquiry he found that on the North part of Jai Prakash Nagar in road No.2 casting work on the 2nd floor measuring one Katha land was going on and on seeing the informant and patrolling party all the labourers working there ran away and one person who introduced himself as brother-in-law of the land owner, Dilip Narayan Mishra, was caught by the police personnel after chasing him and on enquiry he said that the owner of the land is Shiv Chandra Jha, petitioner, who resides on the ground floor of



the said building. It is further alleged that in spite of knowing that no construction can be done on the land of Housing Board, the accused persons were carrying the construction work with an intention to grab the land of the Housing Board causing loss to the Government property.

Counsel for the petitioner submits that from bare perusal of the FIR it is evident that no case is made out against this petitioner. The FIR itself reveals that petitioner was not present at the place of occurrence and he has been made accused only on the basis of disclosure made by one Dilip Narayan Mishra, who was caught on the spot. It is submitted that as a matter of fact on the date of alleged occurrence petitioner was in Delhi as he is an employee of a private organization in New Delhi and he had gone to New Delhi on 30.06.2020 which will be evident from the reservation slip. In support of his submission learned counsel for the petitioner has annexed the reservation slip (Annexure-2). It is submitted that, as per allegation, construction work was going on but no construction material was seized from the place of occurrence. It is further submitted that no new construction was going on and petitioner and his wife are residing in the building since 2016 and in support of the submission electricity bill and municipal tax



receipt of 2016-17 and 2019-20 has been annexed as Annexure-5. It is next submitted that no fresh construction was being done and the house in question is a old house which will also be evident from the self assessment form of property tax issued by Patna Municipal Corporation for the year of assessment dated 2019-20 dated 10.06.2019. It is submitted that FIR was lodged by the informant just to defame and harass the petitioner and his family members with malicious intention. It is submitted that if the FIR is not quashed, it will amount to abuse of process of law ultimately leading to travesty of justice.

However, learned counsel for the State opposed the application and submitted that from perusal of the FIR it is apparent that it is specific case of the Housing Board that petitioner was constructing house on the land of Housing Board and at this stage defence of the petitioner cannot be looked into and the same cannot be a ground of quashing of the FIR.

Heard learned counsel for the petitioner and the State.

Law with regard to quashing of FIR is well settled and the same can be exercised in exceptional circumstances. Following categories of cases are reiterated by way of illustration wherein such power could be exercised to prevent the abuse of the process of any court or otherwise to secure the



ends of justice:-

“(i) 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;

(ii) 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;

(iii) 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;

(iv) 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;

(v) 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;

(vi) 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;

(vii) 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”.

From perusal of the FIR it would be evident that case of petitioner does not fall in any of the seven categories of the cases, as mentioned above. Merit of the defence cannot be looked into at this stage. The documents which are being relied upon by the petitioner cannot be looked into at this stage unless it is of unimpeachable nature and can be translated into material evidence. It is not the province of the Magistrate to enter into a detailed discussion of the merits and demerits of the case.

Considering the rival submission of the parties and discussions made above, this court is of the opinion that no case is made out for quashing of the FIR. This application is, accordingly, dismissed.

(Prabhat Kumar Singh, J)

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