

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.175 of 2020

Arising Out of PS. Case No.-799 Year-2019 Thana- BHAGALPUR KOTWALI District-
Bhagalpur

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Vinoy Kumar Singh Son of Ramanand Singh Resident of Village - Amba,
P.S.- Sahkund, District – Bhagalpur **... .. Petitioner**

Versus

1. The State of Bihar The Principal Secretary, Home Department, Government of Bihar, Patna Bihar
2. The Superintendent of Police, Bhagalpur, Bihar Bihar
3. The Station House Officer, Bhagalpur Kotwali (Jogsar) Police Station, Bhagalpur, Bihar Bihar
4. The Investigating Officer, Bhagalpur Kotwali (Jogsar) Police Station, Bhagalpur, Bihar Bihar
5. Ajay Kumar Son of Ramanand Singh Resident of Village - Amba, P.S.- Sahkund, District - Bhagalpur, presently residing at 1709, 249th PL SE Sammamish Washington (WA) PIN - 98075, United States of America

... .. Respondents

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Appearance :

For the Petitioner	:	Mr.Parijat Saurav, Advocate
For the State	:	Mr.Sanjay Kumar, AC to SC 8
For respondent no.5	:	Mr. Ranjan Kumar Sinha, Advocate

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CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR SINGH
ORAL ORDER

6 28-02-2023 Heard learned counsel for the parties.

Instant writ petition has been filed for quashing Bhagalpur Kotwali (Jogsar) Police Station Case No. 799 of 2019 instituted for offence punishable under sections 447, 341, 323, 384, 506 and 379 of the Indian Penal Code as well as for staying further proceeding going on in this case.

It is alleged in the FIR that when the informant returned from USA and reached his flats, namely, 404 & 405 in Rajlaxmi Apartment, Bhagalpur, he found that his elder brother



Vinoy Kumar Singh (the petitioner herein) had broken open the locks of both flats and had stolen his belongings and on enquiry he demanded extortion money of Rs.2 crores with threatening of dire consequences.

It is submitted by learned counsel appearing for the petitioner that from bare perusal of the FIR, no case is made out against the petitioner under the aforesaid sections of the Penal Code. He submits that the matter is out and out a private property dispute of civil nature. However, in order to settle scores, younger brother (informant) has lodged a false and concocted case against his elder brother (the petitioner). He further submits that even if the entire allegation is taken to be true that the petitioner illegally occupied flats of the informant, the latter had the legal recourse of filing eviction suit in place of lodging FIR. In support of the submissions, learned counsel has relied on decisions of the Supreme Court reported in **AIR 1983 SC 159 (Smt. Kanwal Sood Vs. Nawal Kishore and another)** and **2023 SCC Online SC 90 (Usha Chakraborty and another Vs. State of West Bengal and another)**.

Learned counsel representing the State and the respondent no.5 (the informant) opposed the prayer of the petitioner. It is submitted that there is direct and specific



allegation against the petitioner that he broke open doors of the informant's flats, took away belongings and on enquiry he demanded extortion money of Rs.2 crores. He also threatened the informant of dire consequences. Referring to counter affidavit filed by respondent no.2, it is submitted that the informant in his re-statement, contained in paragraph 2 of the case diary, has supported allegation of theft of household articles of his flats committed by the petitioner. Even father of the petitioner Ramanand Singh, who also happens to be father of the informant, in his statement, contained in paragraph 62 of the case diary, has supported the prosecution case. That apart, witnesses, namely, Sanjay Kumar Singh, Binay Kumar Singh and Prakash Chourasia have also supported the prosecution case in their statements recorded in paragraphs 7, 8 & 9 of the case diary.

Petitioner is the sole named accused in the FIR with direct and specific allegation against him. As per the allegations therein, petitioner entered in the flats of the informant by breaking open its doors and committed theft of household items which attracts offence of criminal trespass and theft (sections 447 & 379 IPC). He demanded extortion money of Rs.2 crore for release of the belongings and flats which is punishable



offence under section 384 IPC. Petitioner is also alleged to have intimidated the informant of dire consequences for which he has been made accused for offence punishable under section 506 IPC.

On going through the allegations made in the FIR, it is apparent that the present case is not merely one involving a private dispute for transaction of flats between two contesting parties. If allegations in FIR are construed as they stand, it is evident that they implicate serious offences having a bearing on a vital societal interest. Such offences cannot be construed to be merely private or civil disputes. It is a settled law that a given set of facts may make out a civil wrong as also a criminal offence and only because a civil remedy may be available to the complainant that itself cannot be a ground to quash a criminal proceeding. Reliance is placed on a decision of the Supreme Court reported in **(2017) 9 Supreme Court Cases 641 (Parbatbhai Aahir @ Parbatbhai Bhimsinhbhai Kumar and others Vs. State of Gujarat and another)**. That apart, whether essential ingredients of criminal offence are present or not has to be judged in the trial. A complaint/FIR disclosing civil transactions may also have a criminal texture. Grounds taken by the petitioners are in the realm of probable defence of the



petitioners, which cannot be seen at this stage. It is settled that FIR cannot be quashed on the ground of false implication. This plea of petitioners can be examined only during trial on the basis of evidence adduced on behalf of parties.

In the facts and circumstances of the case discussed above as also the propositions of law settled by the courts, this Court does not find any merit in the instant petition seeking quashing of the FIR.

In the result, this criminal writ petition is dismissed.

(Prabhat Kumar Singh, J)

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