

N THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.13844 of 2023

Arising Out of PS. Case No.-587 Year-2022 Thana- KUDHNI District- Muzaffarpur

1. SHAILENDRA KANT DIXIT SON OF R.K DIXIT R/O HOUSE NO. A-13/1 A BLOCK KUSUM PUR, VASANT VIHAR-1, SOUTH, WEST DELHI, DELHI- 110057(NAMED AS SHAILENDRA DIXIT IN FIR)
2. SHIV DIXIT SON OF SHAILENDRA KANT DIXIT R/O A-13/1, VASANT VIHAR, NEW DELHI, SOUTH WEST DELHI, DELHI- 110057
3. PRADEEP KUMAR SAHU SON OF GHANSHYAM SAHU R/O- FLAT NO. 301, SETHI MAX ROYAL, OPPOSITE MAHAGUN MODERNA, SECTOR- 76, NOIDA, GAUTAM BUDDHA NAGAR, UTTAR PRADESH- 201301(NAMED AS PRADEEP SAHU IN FIR)
4. VINAYAK GAUR SON OF LOKESH CHAND GAUR R/O GILL COLONY, SAHARANPUR, P.S.- SAHARANPUR, DISTT.- SAHARANPUR (U.P)- 247001(NAMED AS VIYANAK GAUD IN FIR)
5. ULLAS BHATTACHARYA SON OF INDU BHUSHAN BHATTACHARYA R/O E-811, GROUND FLOOR, OPPOSITE MARKET NO. 2, CHITTARANJAN PARK, SOUTH DELHI, DELHI- 110019
6. PRADEEP KUMAR GUPTA SON OF K.D GUPTA R/O 26/1 DLF CITY, PHASE 2, SIKANDERPUR GHOSI, GURGAON, P.S. AND DISTT.- GURGAON(HARAYANA_ 122002)

... .. Petitioner/s

Versus

1. STATE OF BIHAR THROUGH PRINCIPAL SECRETARY, DEPARTMENT OF HOME, GOVT. OF BIHAR, PATNA BIHAR
2. DIRECTOR GENERAL OF POLICE, BIHAR, PATNA BIHAR
3. PRINCIPAL SECRETARY, DEPT. OF HOME, GOVT. OF BIHAR, PATNA BIHAR
4. SENIOR SUPERINTENDENT OF POLICE, MUZAFFARPUR, BIHAR BIHAR
5. OFFICER-IN-CHARGE, KUDHANI POLICE STATION, MUZAFFARPUR BIHAR
6. Dhani Singh S/O Jaipal Singh Village-Kheda, Post- Simbholi, P.S.- Bahadurgarh, District- Hapur, U.P.

... .. Opposite Party/s

Appearance :

For the Petitioner/s :	Mr. Sunit Kumar
For the Opposite Party/s :	Mr. Ram Naresh Ray
For the Respondent :	Mr. S.D. Sanjay, Sr. Advocate
	Mr. Sanoj Pal, Advocate
	Mrs. Parul Prasad, Advocate
	Mr. Harshit, Advocate
	Miss. Sushmita Mishra, Advocate

CORAM: HONOURABLE MR. JUSTICE SANDEEP KUMAR
ORAL ORDER



6 11-04-2023 Heard learned counsels for the parties at length.

This application has been filed for quashing the F.I.R of Kudhani (Turki O.P) P.S. Case No. 587 of 2022 dated 18.11.2022 registered under Sections 384/386, 406, 420, 436, 511, 506 and 34 of the Indian Penal Code passed by learned Court of A.C.J.M., 1st, (West) Muzaffarpur.

The prosecution story in short is given hereinbelow:-

It has been alleged by one of the employees of M/S Rawat Associates JV namely Dhani Singh that the construction work of Hajipur-Muzaffarpur stretch of NH-77 in Bihar was assigned to one Gammon India and its subsidiary company PHPL which they left in the lurch, after that the matter traveled up to NCLT and one Sutanu Sinha was appointed as Resolution Professional (RP) by NCLT and management of PHPL came under his supervision. Further, Sutanu Sinha had introduced the accused persons to M/S Rawat Associates JV and the accused persons arranged the contract to M/S Rawat Associates JV on 12.10.2020.

It has been alleged that the accused persons started blackmailing M/S Rawat Associates JV and started asking for money on the pretext of encroachment removal and



compensating farmers; and also on the pretext of returning the money after receipt of the same from NHAI. The accused persons allegedly asked for Rs. 4 crore and they would also ask for 3.5% extra on bills. Further, the works of M/S Rawat Associates JV had been going well but due to such laxity of the accused persons, the works of the Associates was brought to a halt. It is further alleged that the accused persons have stopped the salary of the M/S Rawat Associates JV. It has also been alleged that the accused persons have cheated and extracted money from NHAI in the name of maintenance of road of 16 KM which has not even been constructed. It is also alleged that the accused persons took away the works of M/S Rawat Associates JV and assigned the same to one Khokhar Infra. When the informant asked for his money, then the accused persons threatened for attacks on the informant and his associated men. Also, 15.09.2022 one of the accused Mr. Ullas Bhattacharya threatened the informant at Kamtoul Petrol Pump to give money. It is also the allegation against the accused persons that they tried to set the camps and machinery at fire.

Learned senior counsel for the petitioners has argued at length with the aid of the documents annexed with the petition as well as supplementary counter affidavit and has taken



this Court to the materials available on record in support of their prayer of quashing of the F.I.R.

Learned senior counsel, Sri S.D. Sanjay and Sri Saijpal appearing for the respondent no.6 have opposed the prayer of quashing of the petitioners and have relied upon the case of *Neeharika Infrastructure vs State of Maharashtra 2021 Sc onlineSc 315* in support of their argument, that this F.I.R. cannot be quashed.

I have considered the submissions of both the parties, this Court will exercise the powers under Section 482 for quashing the F.I.R. very rarely if a case is made out for quashing.

The Hon'ble Supreme Court in the case of *Neeharika Infrastructure vs State of Maharashtra (supra)* has laid down the following guidelines for quashing the F.I.R.

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 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 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.

In my consideration, no good ground for quashing the F.I.R. is made out, though the learned senior counsel had tried to submit that the prosecution was malicious.

In these circumstances, this application is dismissed with liberty to the petitioners to raise all the grounds before the Investigating Officer as earlier directed on 3rd April, 2023 and if, the petitioners are aggrieved by the outcome of the investigation, the petitioners have all the liberty to take steps in law for redressal of his grievances. It is expected that the



investigation is concluded expeditiously by the Investigating Agency. This Court is not giving any time frame for concluding the investigation as the matter relates to commercial transactions and it may take some time for investigation.

The interim protection granted to the petitioners by various orders of this Court are hereby vacated.

Any observations made in this application is tentative in nature and will not affect the merit of the case during investigation.

(Sandeep Kumar, J)

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