

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.622 of 2021

Arising Out of PS. Case No.-80 Year-2020 Thana- ALINAGAR District- Darbhanga

INDRAKANT JHA Son of Late Ramawtar Jha Permanent resident of Village-
Nawanagar, Narma Panchayat, P.S.- Alinagar, District- Darbhanga.

... .. Petitioner/s

Versus

1. THE STATE OF BIHAR THROUGH PRINCIPAL SECTT., DEPTT. OF HOME, BIHAR, PATNA Bihar
2. The Principal Secretary, Department of Home, Government of Bihar, Patna. Bihar
3. The Superintendent of Police, District- Darbhanga. Bihar
4. The Station House Officer, P.S.- Alinagar, District Darbhanga Bihar
5. Sri Pawan Kumar Jha Son of Ramakant Jha Resident of Village- Nawanagar, P.S.- Alinagar, District- Darbhanga.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Sunil Kumar Dubey Mr. Suraj Kumar, Advocates.
For the Respondent/s	:	Mr. Manoj Kumar, AC to GP-4

CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR SINHA
ORAL JUDGMENT

4 **04-07-2023**

Heard the parties.

2. The present application has been filed for quashing of the FIR bearing Alinagar PS Case No. 80/2020 dated 10.09.2020 lodged against the petitioner and his family members for the offences punishable under Sections 147, 148, 149, 447, 342, 323, 337, 338, 324, 186, 379, 427 and 504 of the IPC.

3. The background fact of the case is that under Gram Panchayat Sadak Yojna, PCC road was constructed having length of 200 ft and width of 8-9 ft from the house of



one Bachcha Jha to the house of Shiv Kumar Jha. The house of Rama Kant Jha, the informant of Alinagar PS Case No. 79/2020 is situated just south to the PCC, a house of Pawan Jha who is the informant of Alinagar PS Case No. 80/2020 (impugned FIR) is situated just north to the PCC road. The informant of Alinagar PS Case No. 79/2020, Rama Kant Jha claims that the aforesaid PCC road was proposed to be constructed having 07 ft. of width but at the instance of informant of Alinagar PS Case No. 80/2020 (impugned FIR), namely, Pawan Jha and others, the aforesaid PCC road has been constructed having 09 ft. width i.e., 02 ft more encroaching upon the private land of Rama Kant Jha. The dispute arose between the parties on this issue and both of them have lodged FIRs having the same date of occurrence and claiming that they have sustained injuries due to assault.

4. The impugned FIR bearing Alinagar PS Case No. 80/2020 has been lodged by Respondent No. 5 alleging therein that the petitioner and others armed with Lathi, Danda and iron rod assaulted the informant and his family members and also snatched gold chain, ring and cash of Rs. 47,000/-.

5. Learned counsel for the petitioner submits that the petitioner is a practicing advocate at Alipur Court as well as at Calcutta High Court. The dispute has arisen between the



parties due to illegal construction of village road over the private land of the petitioner's uncle, namely, Rama Kant Jha. The impugned FIR has been lodged as a counter blast to the FIR lodged by, Rama Kant Jha, uncle of the petitioner bearing Alinagar PS Case No. 79/2020 alleging assault against Respondent No. 5 and other family members causing grievous hurt to the family members of the petitioner.

6. He further submits that the prosecution started against the petitioner is revengeful and malicious in nature and the allegation of snatching of gold chain, ring etc., are sheer imagination and is super addition and no such occurrence has taken place. The impugned FIR has been lodged by the Respondent No.5 in order to save himself from the FIR bearing Alinagar PS Case No. 79/2020 and accordingly, the same is fit to be quashed.

7. I have heard learned counsel for the petitioner and the State.

8. Law in this regard is well settled that power of police to investigate into a cognizable offence is ordinarily not to be interfered with by the court. The court should be extremely cautious and slow to interfere with the investigation and or trial of criminal cases and should not install the investigation and or



prosecution if it is convinced beyond any manner of doubt that the FIR does not disclose commission of an offence or that the allegations contained in the FIR do not constitute any cognizable offence or that the prosecution is barred by law.

9. Upon perusal of the FIR, the quashing of which has been sought by the petitioner on its face value and accepted in entirety, *prima facie*, constitutes the cognizable offence. The police has investigated both the FIRs and the supervising authority has found the allegation made in Alinagar PS Case No. 79/2020 as true under Sections 341, 323, 324, 307, 447, 504, 506/34 of the IPC against the FIR named accused persons, namely, 1. Parmanand Jha, 2. Lal Jha, 3. Pawan Jha (Respondent No.5) and other accused persons, namely, 1. Ankesh Jha, 2. Murari Jha and 3. Subhas Jha, the allegation was not found true.

10. Likewise, after investigation and during supervision of Alinagar PS Case No. 80/2020, the same was found true under Sections 147, 148, 149, 447, 343, 323, 337, 338, 504 of the IPC against petitioner and others namely, 1. Indrakant Jha, 2. Pramod Jha, 3. Ramakant Jha, 4. Dilip Jha, 5. Anil Jha, 6. Vijay Jha and other accused persons named in the FIR, the allegation against them was not found true, namely, 1.



Nawal Kishore @ Dhona, 2. Pankaj Jha. 3, Chintu Jha, 4. Awadhesh Jha, 5. Govind Jha and 10-15 unknown persons.

11. The police during investigation has found evidences against the petitioner which could be tested by the trial court.

12. The Hon'ble Apex Court in the case of ***Neeharika Infrastructure Pvt Ltd. v. State of Marashtra & Ors*** reported in ***2021 SCC OnLine 315*** has held that *it is settled principle of law that power of the police to investigate into a cognizable offence ordinarily not to be interfered with by the court save in exceptional case where non-interference would result in miscarriage of justice. The High Court has no inherent powers to interfere with the investigation, unless it is found that the allegations do not disclose the commission of cognizable offence or the power of investigation is being exercised by the police malafidely. The High Court should be extremely cautious and slow to interfere with the investigation and/or trial of criminal cases and should not stall the investigation and/or prosecution except when it is convinced beyond any manner of doubt that the FIR does not disclose commission of an offence or that the allegations contained in the FIR do not constitute any cognizable offence.*



13. In the case of ***R.P. Kapur v. State of Punjab*** as reported in ***AIR 1960 SC 866***, the Hon'ble Supreme Court has carved out some exceptions to the rule and has laid down the grounds for quashing of an FIR enumerating: *where the allegations in the first informant report or the complaint, even if they are taken at their face value and accepted in their entirety, do not constitute the offence alleged; in such cases no question of appreciating evidence arises; it a matter merely of looking at the complaint or the first information report to decide whether the offence alleged is disclosed or not.*

14. It is true that there is a case and counter case between the parties and both the parties have alleged abuse, assault and insult with an intent against each other but mere fact that after the petitioner's side lodged an FIR and subsequent thereof, the impugned FIR has been lodged by Respondent No. 5 cannot be said to be a ground for quashing of the FIR. Whether the FIR lodged by Respondent No.5 is a counter blast to the FIR lodged by the petitioner is a matter of investigation and the real fact can only be ascertained after investigation. Quashing of the FIR on this very ground and the same having been lodged as a counter blast, in my opinion, is not permissible in law. The petitioner has failed to point out any other legal



grounds for quashing of the FIR warranting interference by this Court under extraordinary writ jurisdiction.

15. In the result, the present application stands dismissed.

(Anil Kumar Sinha, J)

Md. Perwez Alam

AFR/NAFR	AFR
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