

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**CRIMINAL MISCELLANEOUS No.26117 of 2023**

Arising Out of PS. Case No.-468 Year-2022 Thana- SHASTRINAGAR District- Patna

Saket Gupta, son of Sri Dinesh Kumar, R/o Mohalla-Daldali Road, Bakarganj,  
PS- Kadam Kuan, Dist- Patna (Bihar)

... .. Petitioner

Versus

The State of Bihar

... .. Opposite Party

**Appearance :**

For the Petitioner : Mr. Baua Jha, Advocate

For the Opposite Party : Mr. Jitendra Kumar Singh, APP

**CORAM: HONOURABLE MR. JUSTICE SANDEEP KUMAR**

**ORAL JUDGMENT**

**Date : 11-07-2023**

This application has been filed for quashing of the F.I.R. vide Shastri Nagar P.S. Case No.468 of 2022 registered for the offence under Sections 341, 323, 353, 355, 224, 504 & 506/34 of the Indian Penal Code. Alternatively, it has been prayed that investigation of the F.I.R. be monitored by this Court and necessary enquiry in availing all relevant facts including audio visual electronic documents (CCTV video and audio footage of all the cameras installed at the premise of Shastri Nagar Police Station from 03.08.2022 to 06.08.2022), mobiles locations, phone call details, google foot print etc. of informant and other officials of the said Police Station may be examined by this Court.

2. The prosecution story is based upon a typed written report of the informant, *inter alia* alleging that on



03.08.2022 at about 17:30 hours he was in charge of the Station Diary as the incharge of the Police Station was not present in the Police Station. One Smt. Smita Sinha, Sub Inspector of Police was also on O.D. duty. At that time, one Ashiki Kumari came to register an F.I.R. alleging that her husband and in-laws are not opening the gate of the house and have verbally and physically abused her. On the basis of her statement, Shastri Nagar P.S. Case No.466 of 2022 dated 03.08.2022 was instituted and investigation was handed over to Smt. Smita Sinha. It is further alleged that the said female police officer called the husband of the victim, who informed that he will be coming to the police station and after about one and half hours, the husband of the victim namely, Abhishek Kumar arrived at the police station along with his two friends and started talking in a charged up manner. It is also alleged by the informant that he requested them to speak one by one but a person namely, Saket Gupta (petitioner) was speaking rudely and he said that police is not behaving properly with the husband of the victim although police was trying to resolve the dispute between husband and wife. It is further alleged that when the police officers insisted that Abhishek Kumar keep the victim with him, he refused to do so and said that he will divorce his wife and send her to mental



asylum. It is further alleged that two persons, who came with the husband of the victim, were also not agreeing to the proposal of the police and they were behaving improperly with the lady police officer, on which, the informant tried to interfere and advised that they should sit outside the office and allow the husband and wife to settle their dispute. It is further alleged that the petitioner said that he is the friend of Abhishek Kumar and being his friend, he can interfere in the matter. It is further alleged that thereafter the petitioner pushed the informant and started raising *halla* and when the other police officials were trying to intervene in the matter, the husband of the victim and the petitioner escaped from the police station. Accordingly, the present F.I.R. has been lodged

3. Learned counsel for the petitioner submits that the petitioner is a regular practitioner of this Court since 2015. According to the petitioner, the real story is that on 03.08 2022 at about 18:03 hours, Abhishek Kumar (husband of the victim) received a missed call on his mobile phone and when he called back on the same mobile number at around 18:10 hours, one lady Sub Inspector of Police namely, Smt. Smita Sinha picked up the phone call and informed that that his wife has come to register a complaint against him, to which he



replied that he himself took his wife to her parent's house and he does not want to live with his wife. The lady police officer then asked him to visit Shastri Nagar police station immediately within 10 minutes. Thereafter, said Abhishek Kumar called his advocate namely, Mr. Saket Gupta (petitioner) on his mobile and sought his legal help and also requested the petitioner to accompany him to Shastri Nagar Police Station. Thereafter, the petitioner along with two colleagues namely, Mayank Shekhar and Mr. Rajni Kant Singh accompanied Mr. Abhishek Kumar and reached Shastri Nagar Police Station at around 19:00 hours on 03.08.2022. After their arrival, the lady police officer namely Smt Smita Sinha asked Abhishek Kumar to come inside the office and further asked the petitioner and his colleagues to stay outside the police station by saying that she needs to interrogate Abhishek Kumar. Thereafter, the lady police officer namely, Smt. Smita Sinha started interrogating Abhishek Kumar in very rude manner and then another Sub Inspector of Police namely, Sri Lal Bahadur Yadav suddenly came without any cause and slapped Abhishek Kumar. This incident compelled the petitioner and his colleagues to approach Smt. Smita Sinha and the informant namely, Sri Lal Bahadur Yadav to request them not to get physical with Abhishek Kumar. Upon which, the informant



namely Sri Lal Bahadur Yadav aggressively approached towards the petitioner and his colleagues with filthy and abusive language. He then pushed the petitioner and his colleagues out of the office and also slapped the petitioner number of times and pushed him out of the office. When the petitioner said that he will bring this incident to the notice of the Superintendent of Police, the informant became violent and aggressive and pushed the petitioner and pounced upon him and thereafter threatened that he will shoot him. The informant also tried to open a box in which the arms and ammunition of the police station was kept with a view to take out arms to shoot the petitioner. The petitioner after coming out of Shastri Nagar Police Station, immediately made a Complaint to the online number of Superintendent of Police available on internet from his mobile number. According to the petitioner, the whole incident was narrated to them on telephone. They informed the petitioner that they have generated one PCR Complaint bearing Complaint No. 15/2022. Thereafter, the Station House Officer namely Sri Ram Shankar Singh arrived at Shastri Nagar Police Station in between 19:30 hours 19.45 hours on 03.08.2022. The Petitioner and his colleagues made an oral complaint to the Station House Officer regarding the misbehaviour of the informant, Smt. Sinha



and Prahlad Jha but the Station House Officer asked the petitioner and his colleagues to go home and assured them that he will take action against the erring police officials on the next day after perusing the CCTV video and audio footage.

4. Learned counsel for the petitioner submits that all the police officers at the police station handling the interrogation were not in police uniform and thus there was no accurate, visible and clear identification and name tags with their designation attached to their dress. Moreover, the S.H.O. who arrived at the Shastri Nagar Police Station was in casual dress. He further submits that the wife of Abhishek Kumar had talked to some persons on her mobile who further asked her to give the mobile to Sri Prahlad Jha, Sub Inspector of Police posted at Shastri Nagar Police Station. It is thus clear that Sri Prahlad Jha was also in connivance with SHO, Ram Shankar Singh, Sri Lal Bahadur Yadav and Smita Sinha.

5. Learned counsel for the petitioner further submits that the petitioner made a complaint to the Superintendent of Police (City), Patna and Director General of Police, Bihar through e-mail which was sent at 20:30 hours on 03.08.2022 by the e-mail ID of the petitioner. The email was sent from the mobile of the petitioner outside the premises of



the Shastri Nagar Police Station. He further submits that one of the colleague of the petitioner namely, Mayank Shekhar in order to make a complaint regarding the aforesaid incident also called twice on the mobile number of the Senior Superintendent of Police, Patna from his mobile but the Senior Superintendent of Police, Patna chose not to attend the call.

6. Learned counsel for the petitioner further submits that the petitioner along with his colleagues left Shastri Nagar Police Station at around 21:00 hours on 03.08.2022 and after leaving the police station, the petitioner sent a whatsapp message to Abhishek Kumar at 21:19 hours and asked him to call back when he came out of Shastri Nagar Police Station. Abhishek Kumar asked the lady officer namely, Smt. Smita Sinha whether he should stay in the police station for further inquiry or he can leave, to which the lady officer Smt. Smita Sinha replied that it was upon his choice. Upon getting such reply, Abhishek Kumar left the police station at about 21:25 hours on 03.08.2022. Subsequently, Abhishek Kumar received 10 missed calls from the mobile number of the lady police officer namely Smt. Smita Sinha and one missed call from Sub Inspector of Police namely, Prahlad Jha after leaving the police station. Abhishek Kumar received a call of lady Sub Inspector



of Police namely Smt. Smita Sinha at 21:46 P.M. wherein she asked him to come to police station again and even the SHO namely, Ram Shankar Singh attended the call and asked him to come to the police station to hear his version of the dispute with his wife but Abhishek Kumar being horrified and traumatised with the occurrence that took place, he chose not to visit the police station.

7. Learned counsel for the petitioner further submits that on the very next day i.e. 04.08.2022, the petitioner made a mentioning before the Division Bench of this Court and the Division Bench of this Court treated the application filed by the petitioner as *suo moto* writ application and the same was converted into a writ application being C.W.J.C. No. 11269 of 2022, which was directed to be listed at 14:30 hours on the same day i.e. on 04.08.2022 and a copy of the application was duly served upon the learned Advocate General, Bihar. After hearing the parties, the Hon'ble Court was pleased to direct the respondents to file a counter affidavit and Mr. Gautam Kumar Kejriwal was appointed as Amicus Curiae in the matter. This Court was further pleased to direct the respondents to keep the CCTV footage of the episode ready so as to enable the Court to examine it.



8. Learned counsel for the petitioner further submits that the petitioner had witnessed a horrific and hostile behaviour of police in the Police Station. He was apprehensive that the police would manipulate documents in order to create a defence and to save their skin as the this Court had directly put question to the Director General of Police, Bihar. The petitioner being apprehensive that any ante-dated FIR may be registered against him, made a mentioning before the learned Chief Judicial Magistrate, Patna on 05.08.2020 that no FIR should be received in back date as the petitioner apprehended that the police may influence the staff of the Court and get an ante-dated FIR received in the office of the Court. The learned Chief Judicial Magistrate called the G.R. clerk who informed that no such FIR implicating the petitioner has been received in the G.R. office till 05.08.2022.

9. It has been submitted by learned counsel for the petitioner that an ante-dated F.I.R. has been filed against the petitioner and he has been mala fidely implicated as an accused in the F.I.R. and therefore, this Court may quash the F.I.R.

10. The counter affidavit of the State has supported the F.I.R. and the police officers have submitted that the F.I.R. may not be quashed.



11. I have considered the submissions of the parties and perused the materials on record.

12. The Hon'ble Supreme Court in the case of ***State of Haryana v. Bhajan Lal*** reported as ***1992 Suppl (1) SCC 335*** has held in paragraph no.102 as under:-

*“102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter 14 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 of the Code 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 channelized and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such a power should be exercised.*

*(1) Where the allegations made in the first information report or the complaint, even if they are taken at the 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 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;*



- (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) of the Code;*
- (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 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;*
- (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.”*

13. From reading of the F.I.R. and the other materials brought on record, it appears that the F.I.R. vide Shastri Nagar P.S. Case No. 468 of 2022 has been filed mala



fidely against the petitioner, who had accompanied his client (friend) namely, Abhishek Kumar for rendering legal assistance. In this case, a practicing lawyer of this Court is being made accused and harassed by the Patna Police. In the opinion of this Court, this kind of prosecution should not be allowed to continue. The petitioner has been made accused only because he had accompanied his client. A lawyer accompanying his client for rendering legal assistance cannot be implicated in an F.I.R.

14. In a similar situation, the Madras High Court in the case of ***C. Raja vs. State Rep. By Sub Inspector of Police and Anr.*** reported in ***2023 SCC OnLine 6182*** has held in paragraph nos.5 and 6 are under:-

*“5. The demeanor of an Advocate will always be different from the demeanor of a layman. Considering the position that he holds and job that he performs, an Advocate in most of the situations reacts boisterously. This is a character which is developed by an Advocate by virtue of the nature of duty that he performs for his clients. The legal profession involves fighting for the rights of the clients and the Advocate tends to react more aggressively even outside the Courts. It may be true that the petitioner had expressed himself more strongly to defend the rights of his client and that by itself should not result in a criminal prosecution against an Advocate. The main intention on the part of the petitioner was not to prevent the*



*Government officials from performing their function and on the other hand, the petitioner was only attempting to safeguard the rights of his client.*

6. *In the considered view of this Court, the continuation of the investigation as against the petitioner will result in abuse of process of Court and the same has to be interfered by this Court.”*

15. Considering the aforesaid facts and also the law laid down by the Hon’ble Supreme Court in the case of **Bhajan Lal** (supra) and by the Madras High Court in the case of **C. Raja** (supra), this Court is of the opinion that continuation of investigation in the present case as against the petitioner will be an abuse of the process of the Court. Accordingly, this application is allowed and the F.I.R. vide Shastri Nagar P.S. Case No.468 of 2022 and all consequential proceedings arising out of the aforesaid F.I.R. are hereby quashed with respect to present petitioner only.

(Sandeep Kumar, J)

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