

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.1313 of 2017

Arising Out of PS. Case No.-280 Year-2017 Thana- ARA NAWADA District- Bhojpur

1. Amarnath Singh Son of Sri Awadhesh Prasad Singh. Resident of Village- Karisath, P.O.- Gajrajganj, P.S.- Udwant Nagar, District- Bhojpur at Ara.
2. Anku Singh, son of Amarnath Singh.
3. Anshu Singh @ Anshu Kumar, Son of Amarnath Singh, Both resident of Sumitra Sadan, Babu Bazar, P.O. Ara, P.S. Ara Town, District- Bhojpur at Ara.
4. Janardan Singh, Son of Late Bipin Bihari Singh.
5. Meena Singh, Wife of Janardan Singh. Both resident of Mohalla- Hari Ji Ka Hata, P.O. Ara, G.P.O., P.S. Nawada, District- Bhojpur at Ara.

... .. Petitioner/s

Versus

1. The State Of Bihar Through The Director General Of Police, Bihar, Patna.
2. The Inspector General of Police, Patna Range, Patna.
3. The Superintendent of Police, Bhojpur at Ara, District- Bhojpur at Ara.
4. The Sub-Divisional Police Officer, Sadar Ara, District- Bhojpur at Ara.
5. The Police Inspector-cum-Station Head Officer, Ara Nawada, Police-Station, District- Bhojpur at Ar

... .. Respondent/s

with

Criminal Writ Jurisdiction Case No. 1401 of 2017

Arising Out of PS. Case No.-280 Year-2017 Thana- ARA NAWADA District- Bhojpur

1. Raju Kumar Singh and Anr
2. Manish Kumar Singh, Both are sons of Late Jay Narayan Singh, resident of Village- Sakaddi, P.S.- Koilwar, District- Ara.

... .. Petitioner/s

Versus

1. The State Of Bihar Through The Director General Of Police, Bihar, Patna and Ors
2. The Inspector General of Police, Patna Range, Patna.
3. The Superintendent of Police, Bhojpur at Ara.
4. The Sub-Divisional Police Officer, Sadar Ara, District- Bhojpur at Ara.
5. The Police Inspector cum Station Head Officer, Ara Nawada Police Station, District- Bhojpur at Ara.

... .. Respondent/s



Appearance :

(In Criminal Writ Jurisdiction Case No. 1313 of 2017)

For the Petitioner/s : Mr.Anita Kumari

For the Respondent/s : Mr.Md. Nadeem Serajgp5

(In Criminal Writ Jurisdiction Case No. 1401 of 2017)

For the Petitioner/s : Mr.Ranjan Kumar Srivastava

For the Respondent/s : Mr.Partha Sarthy

CORAM: HONOURABLE MR. JUSTICE SANDEEP KUMAR

ORAL ORDER

5 06-07-2023 Heard Mr. Lalit Kishore, learned senior counsel for
the petitioners and AC to GP 5 for the State.

Some accused persons have moved this Court vide Cr.
W.J.C. No. 1286 of 2017, Cr. W.J.C. No. 264 of 2017, Cr.
W.J.C. No. 1389 of 2017 and Cr.W.J.C. No. 1392 of 2017 and
these cases were dismissed on 04.05.2017.

The following order was passed is hereinbelow.

*This application has been filed for
quashing the order FIR of Ara Nawada P.S.
Case No. 280 of 2017 registered for the
offences under Sections 419, 420, 467, 468,
471, 120B read with Section 34 of the Indian
Penal Code.*

*As per the FIR, a petition dated
15.7.2017 filed by the informant which was
addressed to the Chief Judicial Magistrate,
Bhojpur, Ara, annexing some letters of higher
officials from one office to another and on the
basis of which the informant wrote in his
petition that the S.D.P.O, Sadar Ara, vide his
letter dated 27.6.2017 reported that the land of
Methodist Church of India which was
“Kaishare Hind” had been registered in the
names of private persons and so he ordered to
lodge an F.I.R. and the letter of the S.D.P.O.*



contained various Annexures from which it appeared that the land of Khata No.1766 Khesra Nos. 2600 and 2601 was of Methodist Church of India in which Church is there and same was being used by Mounted Police. It also appears from his letter that such sale was done on the basis of Power of Attorney given by Most Rev. T. Jhon Chairman of Indian Church to Smt. Namrata Singh and Smt. Manju Singh, partners of Astha Developers. The informant further alleged that the power of attorney was wrongly taken but on the basis of it, the power of attorney holders wrongly sold lands to some persons named in the F.I.R. by executing sale deeds on 07.10.2016, 15.11.2016 and 18.01.2017 in which the names of three witnesses appeared. It is also alleged that such sales were made knowing fully well that the lands were 'Kaisare Hind' i.e. of the Government of India and therefore the sales treating the properties as personal were wrong. The Hon'ble Supreme Court in the case of Neeharika Infrastructure Pvt. Ltd. Vs. State of Maharashtra and Others(2020) 10 SCC 118 has laid down the guidelines for quashing of the FIR. Paragraph 80 of the aforesaid judgment reads as follows:- “80. 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/charge-sheet 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.(vi) 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 encyclopedia 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, fit 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 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 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 opinion the allegations are serious in nature and this FIR cannot be quashed at the initial stage considering the defence of the petitioners. In the aforesaid circumstances, this application is dismissed with direction to Superintendent of Police, Bhojpur at Ara to get the investigation concluded as early as possible and preferably within three months. With the aforesaid observations and directions, this application is dismissed. The interim order dated 19.08.2017 is hereby vacated. Let a copy of this order be communicated to the Superintendent of Police, Bhojpur at Ara through FAX and e-Mail for its compliance forthwith. In view of the dismissal of the case of the petitioners, there is no need of passing any order on the impleadment petition of the intervenor on I.A. No. 1868 of 2017 as it has become infructuous. The



petitioners have liberty to raise all their grounds at an appropriate stage. Any application filed by the petitioners for anticipatory bail shall be considered by the Court below without being prejudiced by the dismissal of the present case as the parameters for consideration of anticipatory bail and quashing are quite different.

This Court had not interfered in the F.I.R. registered accused and therefore for the reason mentioned in the order, this application is also dismissed.

However, petitioners are given liberty to approach the investigating agency with their defence. If such an application is filed, the authorities are bound to consider the Courts order.

With the aforesaid observation, this application is also dismissed.

(Sandeep Kumar, J)

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