

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.35604 of 2022

Arising Out of PS. Case No.-39 Year-2021 Thana- BABUBARHI District- Madhubani

1. MAHENDRA PRASAD SINHA S/o Late Bindeshwari Singh Resient of Village- Sonpatahi, P.s.- Babubarhi, District- Madhubani.
2. Manoj Kumar Mehta @ Manoj Kumar Singh S/o Upendra Prasad Singh Resient of Village- Sonpatahi, P.s.- Babubarhi, District- Madhubani.
3. Kiran Devi W/o Mahendra Prasad Sinha Resient of Village- Sonpatahi, P.s.- Babubarhi, District- Madhubani.
4. Upendra Prasad Singh S/o Bindeshwar Singh Resient of Village- Sonpatahi, P.s.- Babubarhi, District- Madhubani.

... .. Petitioner/s

Versus

1. THE STATE OF BIHAR
2. Usha Kumari D/o Vijay Kumar Mahto Resident of Village and P.O. Sonpatahi, P.S.- Babubarhi, District- Madhubani.

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr.Mukesh Kumar, Advocate
For the Opposite Party/s : Mr.Ramchandra Sahni, APP

CORAM: HONOURABLE MR. JUSTICE RAJIV ROY
ORAL JUDGMENT

Date : 14-03-2023

Heard the parties.

2. The present petition has been preferred for quashing of the order dated 08.04.2022 passed by the learned Additional Sessions Judge-VI-Cum-Special Judge, Protection of Children for Sexual Offences (POCSO) in G.R. No. 21 of 2021 in connection with Babubarhi P.S. Case No. 39 of 2021 registered on 01.03.2021 under Sections 341, 342, 376, 504, 506, 509 and 34 of the Indian Penal Code and Sections 4 and 8 of the POCSO Act whereby and whereunder the learned Court



below took cognizance against the petitioners.

3. The prosecution story read as follows:

(i) vide written report, the informant alleged that she is permanent resident of Village- Sonpatahi, P.S.-Babubarhi, District- Madhubani and on 25.02.2021, at about 2.15 O' Clock of the day, while she was going from her house for collecting vegetable from her field and as she reached near the residence of Deepak Kumar, he called her;

(ii) further allegation in the F.I.R. is that, when she reached in his courtyard, he forcibly locked her in the room and committed rape. It has further been alleged that as she was crying and in the meantime the aunt of Deepak Kumar, namely Kiran Devi and other accuseds came there and having seen the occurrence they screamed '*Julum Ho Gaya*', followed by exhortion to kill her. So that no one could know about the occurrence. Thereafter allegation is that Kiran Devi put cloth in her mouth, so that she could not speak and all of them threatened her for dire consequences;

(iii) However, as her cousin brother Sudhir Kumar had seen her while Deepak Kumar was calling her and as she failed to return home, he told her aunt and other villagers whereafter they came at the residence of Deepak Kumar, saw



the room locked, it was opened, saw her in bad condition removed the cloth from her mouth, whereafter she narrated her ordeal. She was rescued from Deepak's house after three hours by her aunt and other villagers.

4. Accordingly, the FIR.

5. Learned counsel for the petitioners submit that this was a story created to put pressure to get herself married to Deepak Kumar. The further submission is that the occurrence is of 25.02.2021, whereas the FIR was lodged on 01.03.2021 and thus, there was delay of four days in lodging of the case.

6. Learned counsel for the petitioners submit that there was also land dispute going on between the parties, further, as they were agnates, the marriage was being opposed by the family which resulted into this false implication.

7. The further submission is that some differences between the parties have been given criminal color and in any case, the allegation of rape has been made on Deepak Kumar under Section 376 of the IPC has been extended upon all the accused persons including the lady.

8. The learned counsel submits that the charge sheet was submitted against Deepak Kumar under Sections 341, 342, 376 and 504 of the Indian Penal Code as well as Sections 4



& 8 of the POCSO Act and so far as the petitioners herein are concerned, supplementary final form bearing 385 of 2021 dated 21.12.2021 was submitted, which however, was not accepted by the learned Court and on the basis of materials on record, cognizance was taken under Sections as stated above.

9. In support of the case, learned counsel has cited a case related to **All Cargo Movers (I) Pvt. Vs. Dhanesh Badarmal Jain & Anr. Reported in PLJR 2008(1)** with specific reference to paragraph-17:

We are of the opinion that the allegations made in the complaint petition, even if given face value and taken to be correct in its entirety, do not disclose an offence. For the said purpose, this Court may not only take into consideration the admitted facts but it is also permissible to look into the pleadings of the plaintiff-respondent no. 1 in the suit. No allegation whatsoever was made against the appellants herein in the notice. What was contended was negligence and/or breach of contract on the part of the carriers and their agent. Breach of contract simplicitor does not constitute an offence. For the said purpose, allegations in the complaint petition must disclose the necessary ingredients therefor. Where a civil suit is pending and the complaint petition has been filed one year after filing of the civil suit, we may for the purpose of finding out as to whether the said allegations are



prima facie cannot notice the correspondences exchanged by the parties and other admitted documents. It is one thing to say that the Court at this juncture would not consider the defence of the accused but it is another thing to say that for exercising the inherent jurisdiction of this Court. It is impermissible also to look to the admitted documents. Criminal proceedings should not be encouraged, wise an abuse of the process of the Court. Superior Courts while exercising this power should also strive to serve the ends of justice.

10. The further case cited by the learned counsel for the petitioners is the **State of Haryana Vs. Bhajan Lal** reported in SCC 2019 Vol. XI (2019) 11 SCC with specific reference to paragraph-28 which read as follows :

28. In State of Haryana Vs. Bhajan Lal, this Court has set out the categories of cases in which the inherent power under Section 482 Cr.P.C. can be exercised. Para 102 of the judgment read as follows: (SCC pp. 378-79)

“102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV 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 power should be exercised.

(1) Where the allegations made in the first information report or the complaint, even if they are taken at their 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 FIR 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 Act concerned (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 Act concerned, 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.”

29. We are of the opinion that the present case falls under the 1st, 3rd and 5th category set out in para 102 of the judgment in Bhajan Lal. In such a situation, the High Court erred in dismissing the petition of the appellants filed under Section 482 CrPC. This was a fit case for the High Court to exercise its inherent power under Section 482 CrPC to quash the FIR.

30. It is necessary here to remember the words of this Court in State of Karnataka v. L. Muniswamy which read as follows: (SCC p. 703, para 7)

"7.... In the exercise of this wholesome power, the High Court is entitled to quash a proceeding if it comes to the conclusion that allowing the proceeding to continue would be an abuse of the process of the Court or that the ends of justice require that the proceeding ought to be quashed. The saving of the High Court's inherent powers,



both in civil and criminal matters, is designed to achieve a salutary public purpose which is that a court proceeding ought not to be permitted to degenerate into a weapon of harassment or persecution. In a criminal case, the veiled object behind a lame prosecution, the very nature of the material on which the structure of the prosecution rests and the like would justify the High Court in quashing the proceeding in the interest of justice."

11. The next in line cited by him is **Indian Oil Corporation Vs. NEPC India Ltd. (Raveendram, J.) reported in 2006 (6) SCC page 744** with reference to paragraph-12 which read as follows :

12.The principles relating to exercise of jurisdiction under Section 482 of the Code of Criminal Procedure to quash complaints and criminal proceedings have been stated and reiterated by this Court in several decisions. To mention a few-Madhavrao Jiwajirao Scindia v. Sambhajirao Chandrojirao Angre¹, State of Haryana v. Bhajan Lal, Rupan Deol Bajaj v. Kanwar Pal Singh Gill, Central Bureau of Investigation v. Duncans Agro Industries Ltd., State of Bihar v. Rajendra Agrawalla, Rajesh Bajaj v. State NCT of Delhi, Medchl Chemicals & Pharma (P) Ltd. v. Biological E. Ltd., Hridaya



Ranjan Prasad Verma v. State of Bihar, M. Krishnan V. Vijay Singh and Zandu Pharmaceutical Works Ltd. v. Mohd. Sharaful Haque.

The principles, relevant to our purpose are:

(i) A complaint can be quashed where the allegations made in the complaint, even if they are taken at their face value and accepted in the entirety, do not prima facie constitute any offence or make out the case alleged against the accused.

For this purpose, the complaint has to be examined as a whole, but without examining the merits of the allegations. Neither a detailed inquiry nor a meticulous analysis of the material nor an assessment of the reliability or genuineness of the allegations in the complaint, is warranted while examining prayer for quashing of a complaint.

(ii) A complaint may also be quashed where it is a clear abuse of the process of the court, as when the criminal proceeding is found to have been initiated with mala fides/malice for wreaking vengeance or to cause harm, or where the allegations are absurd and inherently improbable.

(iii) The power to quash shall



not, however, be used to stifle or scuttle a legitimate prosecution. The power should be used sparingly and with abundant caution.

(iv) The complaint is not required to verbatim reproduce the legal ingredients of the offence alleged. If the necessary factual foundation is laid in the complaint, merely on the ground that a few ingredients have not been stated in detail, the proceedings should not be quashed. Quashing of the complaint is warranted only where the complaint is so bereft of even the basic facts which are absolutely necessary for making out the offence.

(v) A given set of facts may make out: (a) purely a civil wrong; or (b) purely a criminal offence; or (c) a civil wrong as also a criminal offence. A commercial transaction or a contractual dispute, apart from furnishing a cause of action for seeking remedy in civil law, may also involve a criminal offence. As the nature and scope of a civil proceeding are different from a criminal proceeding, the mere fact that the complaint relates to a commercial transaction or breach of contract, for which a civil remedy is available or has been availed, is not by itself a ground to quash the criminal



proceedings. The test is whether the allegations in the complaint disclose a criminal offence or not.

12. The aforesaid cases have been cited by the petitioners to show that in a land dispute, criminal color has been given and as such where the case is of pure civil dispute, criminal cases cannot continue. Here, too it was also a civil dispute as the informant's family wanted the girl to be married to Deepak Kumar and failure to do so, the present case.

13. *Per contra*, learned APP has opposed the prayer incorporated in the petition and submits that specific allegation of rape is against Deepak Kumar and further against these petitioners, it has been alleged that upon sight of the said occurrence, they immediately took steps to protect instead of handing over Deepak Kumar to the police and in the process, ensured that the minor girl did not escape. Accordingly, clothes were inserted in her mouth, she was confined in a room and only when the family members arrived after some time, she was rescued.

14. So far as the delay is concerned, learned APP submits that a bare perusal of the FIR would show that in a village, the elders come forward and tried to desist the victim's



side to lodge FIR and further wanted to settle the matter in the village itself and in that backdrop, the said delay cannot prove fatal so far as the present petition is concerned.

15. This Court has gone through the facts/allegations in the FIR and the rival submissions put forward by the parties. A bare perusal of the same would show that the accused Deepak Kumar took the girl inside his house, committed rape, the other accused persons including the petitioners herein arrived at the scene, immediately they screamed which followed insertion of cloth in her mouth to make her silent and further allegation is of confining in a room, but for the timely arrival of the family members, the situation may have been very different and it was grace of god that she was rescued from the clutches of the accused persons. In between, the trauma the girl faced after she was raped cannot be overlooked.

16. So far as the grievances of extension of Section 376 of the IPC against the other accused persons are concerned, it would be appropriate to bring on record Section 107 of the Indian Penal Code which read as follows:

CHAPTER -V

“107. Abetment of a thing – A person abets the doing of a thing who -



First.- Instigates any person to do that thing ; or

Secondly,- Engages with one or more other person or persons in any conspiracy for the doing of that thing, if an act or illegal omission takes place in pursuance of that conspiracy, and in order to the doing of that thing; or

Thirdly.- Intentionally aids, by any act or illegal omission, the doing of that thing.

Explanation 1-A A person who, by wilful misrepresentation or by wilful concealment of a material facts which he is bound to disclose voluntarily causes or procures, or attempts to cause or procure, a thing to be done, is said to instigate the doing of that thing.”

17. Thus the petitioners cannot absolve themselves from the sections of the I.P.C. under which cognizance taken against them.

18. It is ironical that despite allegations against the accused persons in the FIR itself, the police chose to submit supplementary final form bearing 385 of 2021 dated 21.12.2021 so far as the petitioners are concerned, the same is subject to enquiry.

19. The learned Court took up the matter and after going through the FIR as also the materials on record



rightly took cognizance against the accused persons under Sections 341, 342, 376, 506 of the Indian Penal Code and Sections 48 of the POCSO Act having been *prima facie* satisfied.

20. The allegation against these petitioners are that immediately after the commitment of rape, they arrived and ensured confinement of the girl to save the alleged rapist. In that background, extension of Section 376 of the Indian Penal Code is fully justified.

21. So far as the decisions of the Hon'ble Apex Court cited by the petitioners is/are concerned, the Hon'ble Apex Court in said cases held that if the allegations made in the complaint, even if given on face value do not disclose an offence the criminal proceedings should not be encouraged.

22. Regarding the case of **All Cargo Movers (I) Pvt. Vs. Dhanesh Badarmal Jain & Anr.** reported in **PLJR 2008(1)** (supra), this Court is of the view that the present case cannot be put in the category of civil matter. There is direct allegation of rape followed by confinement of the girl against the accused persons and as such, the said case cited by the petitioner do not come to their rescue.



23. Even in the case of **State of Haryana Vs. Bhajan Lal** reported in **SCC 2019 Vol. XI (2019) 11 SCC** (supra), the guidelines have been incorporated by the Hon'ble Apex Court wherein amongst other it has been held that if the allegations in the FIR and other materials accompanying the said FIR do not disclose the cognizance to the offence, the criminal proceeding should not be allowed to continue. The background of the allegation that has come in the FIR, this decision is of no help to the petitioners herein.

24. So far as the last decision cited by the petitioner in the case of **Indian Oil Corporation Vs. NEPC India Ltd. (Raveendram, J.)** is concerned, in that case Hon'ble Apex Court amongst other held that *a complaint can be quashed where the allegation made in the complaint, even if they are taken at their face value and accepted in the entirety, do not prima facie constitute any offence or make out the case alleged against the accused.*

25. This cannot be said to be the case in hand wherein direct allegation of rape as also confinement is/are there.

26. In the aforesaid backdrop as also on the basis of the facts on record, the allegations made therein, the



submissions put forward by the learned counsel for the petitioners, this Court is of the considered view that the order in question dated 08.04.2022 passed by the Court of learned Additional Session Judge-VI cum Special Judge (POCSO) Madhubani in G.R. No. 21 of 2021 by which cognizance has been taken against the accused persons under the different sections of Indian Penal Code including Seas also POCSO Act, as stated above is/are fully justified and need no interference.

27. The present petition preferred by the petitioners under Section 482 of the Cr.P.C. is/are misconceived and is accordingly dismissed.

(Rajiv Roy, J)

Jagdish/Neha/-

AFR/NAFR	AFR
CAV DATE	
Uploading Date	20.03.2023
Transmission Date	

