

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No. 42452 of 2018

Arising Out of PS. Case No.-129 Year-2017 Thana- NOORSARAI District- Nalanda

1. Usha Devi and Ors W/o Late Mahendra Prasad, R/o Vill.- Salempur, Post Office- Sohsarai, District- Nalanda.
2. Binod Prasad S/o Late Janak Mahto, R/o Vill.- Maghara, P.S.- Deep Nagar, District- Nalanda.
3. Sunil Kumar S/o Rameshwar Prasad, P.A. Deputy A.G. S.R.A, Secretariat, 5th Floor Office Pradhan Mahalekhakar, Bihar, Birchand patel Path, Patna.

... .. Petitioner/s

Versus

State Of Bihar and Anr

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr.Ramchandra Singh
For the Opposite Party/s : Mr.Sri Anil Kumar

CORAM: HONOURABLE MR. JUSTICE SANDEEP KUMAR
ORAL JUDGMENT

Date : 01-08-2023

Heard learned counsel for the petitioner, learned Additional Public Prosecutor and Shri Y.V. Giri, learned Senior counsel appearing for the opposite party no. 2.

2. That this is an application for quashing the order dated 21.3.2018 passed by Chief Judicial Magistrate, Bihar Sharif in Noorsarai Police Station Case No. 129 of 2017, G.R. No. 2189 of 2017 by which the learned Chief Judicial Magistrate, Bihar Sharif taken cognizance under sections 341, 323, 504, 379, 385, 467, 468, 420, 120 (B)/34 of the Indian Penal Code.

3. The allegation against the accused persons are that they are disturbing the atmosphere of the college by using illegal



means, forging documents and putting the staff not to attend the college.

4. It is further submitted by learned counsel for the petitioners that one Mahendra Prasad who was husband of petitioner no. 1 and father-in-law of the petitioner no. 3 established K.S.T. College in the year 1983 by his own money and donated about 7.7 Acre of land. The petitioner no. 2 is a Assistant Professor in the same College. The Principal of the College/informant started to misuse the College and committed financial irregularities so one Sanjay Kumar filed Noor Sarai Police Station Case No. 177 of 2007 under section 409, 419, 420 467, 468, 471 of the Indian Penal Code and on the order of this Court passed in Cr.W.J.C. No.1058 of 2007 the case was investigated by the C.I.D. as the local police was in collusion of the Informant. C.I.D. submitted charge sheet No. 56 of 2012 under Sections 409, 419, 420, 467, 468 and 471 of the Indian Penal Code and after cognizance the charges were framed on 18.12.2017 under Sections 409, 419, 420, 467, 468, 471/34, 120 (B) of the Indian Penal Code and now the trial is going on.

5. It has been submitted that one Binod Prasad, the witnesses in this case has not got the aid amount released by the State Government so he filed C.W.J.C. No 11254 of 2012 and



C.W.J.C. No. 5297 of 2015 and L.P.A. No. 1165 of 2015 for the aid amount. Usha Devi has also complaint the irregularities committed by the informant before the Chancellor of Universities of Bihar and filed writ petition before this Court. The informant became biased from the action of the petitioners and started to torture the petitioners and threatened to implicate them in criminal case. The informant has also given a legal notice dated 27.4.2017 to implicate the petitioner no. 1 in a case. The informant has also sent anti-social element at the residence of Sunil Kumar but neighbours said that they are not at residence then they threatened the petitioners' family. The Photos of ante- social elements were recorded in C.C.T.V. The matter was brought to notice of the Superintendent of Police, Patna by the informant along with C.C.T.V. footage.

8. It is further alleged that the informant to implicate the petitioners in criminal case, drafted a written statement from an advocate with regard to false allegation and tried to take in collusion the members of Governing Body but due to reasons best known to the informant he again gave written statement on 27.7.2017 and filed both the written statement dated 20.7.2017 and 27.7.2017 before the S.H.O., Noor Sarai Police Station on the basis of which the present case has been instituted.



9. It is further submitted on behalf of the petitioners that from the perusal of both the written statements, it is clear that the informant is biased due to complaint made by the petitioners and writ petitions filed by them before this Court against the irregularities committed by the informant. The statements made in both the written statements are contradictory. In the second written statement dated 27.7.2017 the informant has tried to make the case graver that is why he added allegations of Blackmailing and demanding "Rangdari Tax" of Rs. 50,000/- (Rupees Fifty Thousand) which was not mentioned in the detailed written statement of six pages dated 20.5.2017.

10. It is further submitted by the learned counsel for the petitioner that the informant has not explained the delay of 7 days satisfactorily in filing aforementioned Noor Sarai Police Station Case No.129 of 2017 which clearly indicates that the informant has implicated the petitioners after making a device.

11. It is next submitted by the learned counsel for the petitioners that the allegation of blackmailing, breaking the locks, assaulting the employee, opening the Almirah, forging the documents has not been corroborated by even the interested witnesses examined in due course of investigation. The Governing Body has also not said anything against the



petitioners in course of investigation. The informant has not said anything till the conclusion of the investigation or given details that what were the documents which has been taken by the accused persons. None of the locks were found broken in the investigation.

12. It is further submitted by the learned counsel for the petitioners that the harassing tendency of the informant appears from the fact that the informant had filed Cr. Misc. No. 62059 of 2017 for cancellation of bail of the petitioners as the petitioners were granted anticipatory bail by the learned Sessions Judge, Bihar Sharif, Nalanda which has been dismissed by this Hon'ble Court.

13. It has been submitted on behalf of the petitioners that the present criminal proceeding is malafide and is maliciously instituted with a ulterior motive and to wreak vengeance upon the petitioners with a view to harass them.

14. Learned counsel for the petitioners further submits that from the perusal of the First Information Report it is clear that the informant has used the Court proceeding to degenerate into a weapon of harassment for prosecution which lead to injustice as filing a complaint or case with regard to the irregularities committed by the informant is not an offence.



15. It is further submitted on behalf of the petitioner that the learned Chief Judicial Magistrate, Bihar Sharif, Nalanda has not applied his judicial mind at the time of taking cognizance. He has not perused the case diary as he has passed stereo typed order which discloses that judicial mind has not been applied.

16. It is next submitted that from perusal of the written statement and case diary, it appears that in First Information Report the sections of Indian Penal Code has been mentioned which are not applicable in the facts mentioned in the written statement and is surprising enough that the charge sheet has been submitted in each and every section of First Information Report even though nothing is on record or came in course of investigation with regard to the offence under which charge sheet has been submitted. The Learned Chief Judicial Magistrate has also taken cognizance in each and every sections as mentioned in F.I.R. and charge sheet has been submitted without any evidence which shows that the order taking cognizance is not in accordance with law as well as on fact.

17. The learned Senior counsel appearing on behalf of the opposite party no. 2 at the outset has submitted that the charges has been framed in this case and therefore this application has become infructuous as prayer is of quashing of the order taking



cognizance.

18. He further submits that the allegations levelled against the petitioners make out the case against the petitioners and after investigation, the police has submitted the charge-sheet and thereafter cognizance was taken and further now the charges has been framed and therefore this application is fit to be dismissed.

19. I have considered the submission of the parties. From the submission of the parties and from reading of the F.I.R., it appears that the dispute is basically with regard to the control of the college in question and the present F.I.R. has been filed against the petitioner in furtherance of that dispute.

20. From reading of the F.I.R., it appears that the allegations are improbable and the story made out by the informant cannot be believed and the entire prosecution of the petitioner appears to be *mala-fide* and malicious.

21. So far as the argument of Mr. Giri with regard to the change of stage is concerned, the Hon'ble Supreme Court in the Case of **Anand Kumar Mohatta Vs. State (NCT of Delhi)** (2019) 11 SCC 706 follows:

“First, we would like to deal with the submission of the learned Senior Counsel for the Respondent No.2 that once the charge sheet is filed, petition for quashing of FIR is untenable. We do not see any merit in this submission, keeping in mind the position of this Court in [Joseph Salvaraj A. v. State of Gujarat](#)². In the case of



Joseph Salvaraj A. (supra), this Court while deciding the question whether the High Court could entertain the 482 petition for quashing of FIR, when the charge sheet was filed by the police during the pendency of the 482 petition, observed: -

“16. Thus, from the general conspectus of the various sections under which the appellant is being charged and is to be prosecuted would show that the same are not made out even prima facie from the complainant’s FIR. Even if the charge-sheet had been filed, the learned Single Judge could have still examined whether the offences alleged to have been committed by the appellant were prima facie made out from the complainant’s FIR, charge- sheet, documents, etc. or not.”

There is nothing in the words of this Section which restricts the exercise of the power of the Court to prevent the abuse of process of court or miscarriage of justice only to the stage of the FIR. It is settled principle of law that the High court can exercise jurisdiction under [Section 482](#) of Cr.P.C even when the discharge application is pending 2 (2011) 7 SCC 59 with the trial court³. Indeed, it would be a travesty to hold that proceedings initiated against a person can be interfered with at the stage of FIR but not if it has advanced, and the allegations have materialized into a charge sheet. On the contrary it could be said that the abuse of process caused by FIR stands aggravated if the FIR has taken the form of a charge sheet after investigation. The power is undoubtedly conferred to prevent abuse of process of power of any court.”

22. When the foundation falls the entire building crumbles, the order taking cognizance which is under challenge in this Court is set aside, the subsequent proceedings will automatically fails.



23. The Hon’ble Supreme Court in the case of State of *Haryana Vs. Bhajan Lal 1992 Supp (1) SCC 335* and in the *Pepsi Foods Ltd. And another Vs. Special Judicial Magistrate and Ors. (1998) 5 SCC 749* has held that malicious prosecution should be quashed.

24. In view of the law laid down by Hon’ble Supreme Court in the aforesaid Judgments and in view of the fact that this Court is satisfied that a malicious prosecution is being continued against the petitioners, this application is allowed.

25. Accordingly, the entire prosecution of the petitioners including the F.I.R. and the order dated 21.3.2018 passed by Chief Judicial Magistrate, Biharsharif in Noorsarai Police Station Case No. 129 of 2017, G.R. No. 2189 of 2017 is hereby quashed.

(Sandeep Kumar, J)

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