

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.28288 of 2015

Arising Out of PS. Case No.-67 Year-2004 Thana- EAST CHAMPARAN COMPLAINT
District- East Champaran

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1. Abbas Mian and Ors. son of Issu Mian
 2. Asahab Mian son of Issu Mian Both resident of Bara Pareaua, P.S. Raxaul, District East Champaran.
 3. Harendra Yadav son of Bigu Yadav
 4. Ramadhar Yadav son of Tulsi Rai
 5. Ratnesh Yadav son of Shiv Shankar Rai
 6. Ashok Yadav son of Lal Bahadur Rai All residents of Lachmanwan, P.S. Palanwan, District East Champaran.

... .. Petitioner/s

Versus

1. State Of Bihar and Anr
2. Bagar Raut son of Late Deyali Raut resident of Bara Pareaua, P.S. Raxaul, District East Champaran.

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mrs. Archana Shahi, Advocate

For the Opposite Party/s : Mr. Anil Kumar Singh, No. 1, APP

CORAM: HONOURABLE MR. JUSTICE CHANDRA SHEKHAR JHA
ORAL JUDGMENT

Date : 04-03-2024

1. Heard learned counsel for the petitioner and learned counsel for the respondents.

2. The present quashing petition has been preferred to quash the impugned order dated 29.08.2005 passed in Complaint Case No. 67 of 2004, where learned Sub-Divisional Judicial Magistrate, Raxaul took cognizance for the offences punishable under sections 147 and 323 of the Indian Penal Code against the petitioner.

3. Notice duly served upon O.P. No. 2 but he fails



to join the present proceedings.

4. From the crux of complaint petition it appears that the land mentioned in the complaint petition was the khatiyani land of the Sushil Sikaria for which rent receipts were also being issued in the name of the complainant. Sushil Sikaria, as per complaint, any how wanted to capture the land in question. Complainant used to live on the land by making a hut. 15-16 days before the date of occurrence Sushil Sikaria took the police into confidence and assaulted the family members of the complainant and took away jewellery, Rs. 1200/- and hut was also demolished. The complainant filed an application before the Sub Divisional Officer, Raxaul on 16.03.2004. When no action was taken Sushil Sikaria on 25.03.2004 at about 2 AM came along with 20 -25 persons equipped with arms and removed the hut of the complainant, assaulted him and his family members and took away the utensils and Rs. 1000/-. Again the accused persons came to the hut of the complainant on 27.03.2004, assaulted the complainant and his family members, burnt the hut in which household goods, utensils were burnt, where complainant suffered loss of Rs. 2000/-.

5. It is submitted by learned counsel appearing on behalf of petitioner that no such occurrence took place as



alleged through complaint, and so, present complaint petition is completely false and fabricated. It is submitted that as complainant lost his case through Title Suit No. 185 of 1993 and Title Appeal No. 43 of 2010, the present false criminal case was lodged. It is submitted that as per Block Development Officer (BDO) report no such hutment as alleged by complainant was found on the disputed piece of land and as such allegation, *prima facie*, appears false on its face. It is submitted that to settle the score, civil dispute was given color of criminal case, by O.P. No. 2. While concluding the argument it is submitted that present complaint petition is nothing but a case lodged under *malafide* intention, where no *prima facie*, case appears to be made out as alleged under Section 147 and 323 of the IPC.

6. Learned counsel referred to the legal report of Hon'ble Supreme Court in the case of **Usha Chakraborty and Another Vs. State of West Bengal and Another** as reported in **(2023) SCC Online SC 90**.

7. Learned APP appearing on behalf of State, while opposing the application submitted that to make out, *prima facie*, case under Section 323 of the IPC no injury report is required and mere hurt is sufficient, therefore cognizance for offence under Sections 147 and 323 of the IPC not appears



prima facie, bad in the eyes of law.

8. It would be apposite to reproduce the paragraph no(s). 6, 7, 8, 9 and 10 as reported through **Usha Chakraborty case (supra)**, which reads as under:

6. In *Paramjeet Batra v. State of Uttarakhand*, this Court held:—

“12. While exercising its jurisdiction under Section 482 of the Code of the High Court has to be cautious. This power is to be used sparingly and only for the purpose of preventing abuse of the process of any court or otherwise to secure ends of justice. Whether a complaint discloses a criminal offence or not depends upon the nature of the facts alleged therein. Whether essential ingredients of criminal offence are present or not has to be judged by the High Court. A complaint disclosing civil transactions may also have a criminal texture. But the High Court must see whether a dispute which is essentially of a civil nature is given a cloak of criminal offence. In such a situation, if a civil remedy is available and is, in fact, adopted as has happened in this case, the High Court should not hesitate to quash the criminal proceedings to prevent abuse of process of the court.”

7. In *Vesa Holdings Private Limited v. State of Kerala*, it was held that:—

“13. It is true that a given set of facts may make out a civil wrong as also a criminal



offence and only because a civil remedy may be available to the complainant that itself cannot be a ground to quash a criminal proceeding. The real test is whether the allegations in the complaint disclose the criminal offence of cheating or not. In the present case there is nothing to show that at the very inception there was any intention on behalf of the accused persons to cheat which is a condition precedent for an offence under Section 420 IPC. In our view the complaint does not disclose any criminal offence at all. The criminal proceedings should not be encouraged when it is found to be mala fide or otherwise an abuse of the process of the court. The superior courts while exercising this power should also strive to serve the ends of justice. In our opinion in view of these facts allowing the police investigation to continue would amount to an abuse of the process of the court and the High Court committed an error in refusing to exercise the power under Section 482 of the Criminal Procedure Code to quash the proceedings.”

8. In *Kapil Aggarwal v. Sanjay Sharma*, this Court held that Section 482 is designed to achieve the purpose of ensuring that criminal proceedings are not permitted to generate into weapons of harassment.

9. In the decision in *State of Haryana v. Bhajan Lal*, a two Judge Bench of this Court considered the statutory provisions as also the earlier decisions and held as



under:—

(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 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.

10. In *Neeharika Infrastructure Pvt. Ltd. v. State of Maharashtra*, a three Judge Bench of this Court laid down the following principles of law:—

“57. From the aforesaid decisions of this Court, right from the decision of the Privy Council in the case of Khawaja Nazir Ahmad (supra), the following principles of law emerge:

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 cognizable offences;

ii) Courts would not thwart any investigation into the cognizable offences;

iii) However, in cases where no cognizable offence or offence of any kind is disclosed in the first information report the



Court will not permit an investigation to go on;

iv) The power of quashing should be exercised sparingly with circumspection, in the 'rarest of rare cases'. (The rarest of rare cases standard in its application for quashing under Section 482 Cr. P.C. is not to be confused with the norm which has been formulated in the context of the death penalty, as explained previously by this Court);

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;

vii) Quashing of a complaint/FIR should be an exception and a rarity 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. The inherent power of the court is, however, recognised to secure the ends of justice or prevent the abuse of the process by Section 482 Cr. P.C.

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 encyclopaedia 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. During or 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 cautious. It casts an onerous and more diligent duty on the court;

xiv) However, at the same time, the court, if it 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; and xv) When a prayer for quashing the FIR is made by the alleged accused, the court when it exercises the power under Section 482 Cr. P.C., only has to consider whether or not the allegations in the FIR disclose the commission of a cognizable offence and is not required to consider on merits whether the allegations make out a cognizable offence or not and the court has to permit the investigating agency/police to investigate the allegations in the FIR.”

9. In view of aforesaid factual and legal discussions, it appears that both parties are in litigating terms, where title suit was pending between the parties as discussed above. It further appears that complaint was brought with main allegation to put dwelling unit on fire, where concerned Block Development Officer (BDO) report reveals that no such hutment as alleged was ever constructed on disputed land, which makes case of complainant, *prima facie*, doubtful on its face. It also appears that allegation of assault was ornamental and in support of the main allegation and when main allegation appears to be



found false, *prima facie*, the offences punishable under Sections 147 and 323 of the IPC also appears doubtful. In view of above and by taking note of guidelines as mentioned in clause no(s). 1 and 7 of para no. 9 of **Usha Chakraborty case (supra)**, the present criminal proceeding, *prima facie*, appears manifestly attended with *malafide* intention and ulterior motive for wrecking vengeance against petitioner.

10. Accordingly, impugned order of cognizance dated 29.08.2005 with all its consequential proceedings, *qua*, petitioner arising thereof as passed in Complaint Case No. 67 of 2004, pending before learned Sub-Divisional Judicial Magistrate, Raxaul is hereby quashed and set aside.

11. The application stands allowed.

12. Let a copy of this order be sent to learned Trial Court, immediately.

(Chandra Shekhar Jha, J.)

S.Tripathi/-

AFR/NAFR	AFR
CAV DATE	
Uploading Date	
Transmission Date	

