

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.56875 of 2018

Arising Out of PS. Case No.-2963 Year-2017 Thana- VAISALI COMPLAINT CASE
District- Vaishali

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1. Nafis Alam @ Md. Nafis Alam Son of Shafique Alam
 2. Hena Pravin @ Hena wife of Nafis Alam @ Md. Nafis Alam
 3. Ghazala Yasmin wife of Md. Azam Khan Petitioner Nos. 1 and 2 are residents of Village - Anwarpur, Police Station - Town Hajipur, District Vaishali at present residing at Mohalla - Goush Nagar, Chas, Police Station - Chas, District - Bokaro Jharkhand and petitioner no. 3 is the resident of Mohalla New Kabari Bazar Patti near Kali Mandir Dhanbad, Police Station - Bank More, District - Dhanbad Jharkhand.

... .. Petitioner/s

Versus

1. State of Bihar
2. Bipin Bihari Patel son of Rama Prasad Resident of Village - Mohabbatpur, Police Station - Ganga Bridge, Hajipur, District - Vaishali.

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Mukul Prasad, Advocate
For the Opposite Party/s : Mr. Lalan Kumar, APP

CORAM: HONOURABLE MR. JUSTICE CHANDRA SHEKHAR JHA
ORAL JUDGMENT

Date : 23-04-2024

1. The present petition preferred for quashing the order dated 24.03.2018 passed by the learned Additional Chief Judicial Magistrate-X, Vaishali, Hajipur in G 2963 of 2017 / Tr. 763 of 2017 in which the cognizance under sections 406 and 420 of the Indian Penal Code has been taken against the petitioners.

2. The prosecution case in brief is that one



Bipin Bihari Patel has lodged a complaint petition before the learned Chief Judicial Magistrate, Vaishali on 20.11.2017 according to which the prosecution case in brief is as follows:

I. That it has been stated by the complainant that one Shafique Alam had entered into an agreement by executing a Mahdanama for selling his land on 31.10.2012 pertaining to khesra no. 706, khata no. 34, area 17 dhurs and khesra no. 667, khata no. 607, area 11 dhurs 11 kanwa and khesra no. 640 khata no. 607 are 5 dhurs 11 kanba of Mauza Anwarpur, Thana Hajipur (T), District- Vaishali for a total consideration of Rs. 25,00,000 out of which a total amount of Rs. two lacs was advanced of which petitioner no.1 is a witness. That one lac was paid in cash and one lac was credited to the account of petitioner no.1.

II. That after the execution of the Mahdanama between Parmanad Rai and Manoj Kumar Singh and accused no.1 a total of Rs. 21,75,000/- (Rs. Twenty one



lac seventy five thousand only) was deposited in the name of the family members of Md. Shafique Alam including these petitioners.

III. That the further case of the prosecution is that accused no. 1 Md. Shafique Alam refused to execute the sale deed without taking the full consideration money, as such on 06.01.2016 the complainant paid the full and final amount of the consideration money but the accused no.1 did not execute the same, resultantly, complainant on 19.06.2017 lodged a written report to the Officer- in-charge, Hajipur (T) P.S. but no action was taken.

3. Learned counsel appearing for the petitioners submitted that from the narration of FIR, it appears that the dispute between the parties is civil in nature, which may be a good case for specific performance, but present criminal prosecution is totally unwanted, which appears to lodge out of oblique and ulterior motives and as such, same is nothing but a malicious prosecution. It is submitted that however case



between the parties and the issue arises thereof, now stands compromised in terms of Annexure-II, where amount of Rs. 17 Lakhs was received by O.P. No. 2 from petitioners side and also Rs. 2 Lakhs through cheque bearing no. 070986. It is pointed out that in view of compromised/settlement continuing with further proceedings would only amount to abuse of the process of the Court of law and as such same be set aside/quashed. In support of his submissions, learned counsel relied upon the legal reports of Hon'ble Supreme Court in the matters of ***Usha Chakraborty and Another vs. State of West Bengal and Another*** reported in **2023 SCC OnLine SC 90** and ***State of Haryana and Others vs. Bhajan Lal and Others*** reported in **1992 Supp (1) Supreme Court Cases 335**.

4. Learned counsel failed to turn up on repeated calls to represent O.P. No. 2.

5. Learned APP, while opposing the application fairly submitted that Annexure-II suggests



that matter appears compromised between the parties where O.P. No. 2 received total of Rs. 19 Lakhs.

6. It would be apposite to reproduce the paragraph no. 6, 7, 8 and 10 of ***Usha Chakraborty Case (supra)***, which reads as under:

6. In *Paramjeet Batra v. State of Uttarakhand & Ors.*, 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 and Anr. v. State of Kerala and Ors.*, 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 and Ors. v. Sanjay Sharma and Ors.*, 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.

10. In *Neeharika Infrastructure Pvt. Ltd. v. State of Maharashtra and Others*, 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."

7. It would be appropriate to reproduce the paragraph no. 102 of ***Bhajan Lal Case (supra)***, which reads as under:

"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 channelised 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 informant 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 persons 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."

8. In view of aforesaid legal and factual submissions, it appears from the narration of complaint that dispute is basically civil in nature, which ultimately appears compromised in terms of Annexure-II, between the parties, where out of said compromise, O.P. No. 2 appears to receive Rs. 19 Lakhs saying that no dues amount is pending on Shafique Alam, Nafis Alam and other family members.

9. In view of above, as matter appears compromised between the parties, by taking a guiding note of guidelines nos. 1 and 7, impugned order of taking cognizance dated 24.03.2018 qua petitioners with all its consequential proceedings, arising thereof, as passed in G 2963 of 2017 / Tr. 763 of 2017 pending before learned Additional Chief Judicial Magistrate-X, Vaishali, is hereby quashed and set aside.



10. Hence, this application stands allowed.

11. TCR (Trial Court Records), if any, be returned to learned trial court alongwith the copy of this judgment.

(Chandra Shekhar Jha, J)

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AFR/NAFR	NAFR
CAV DATE	NA
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