

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.1446 of 2024

Arising Out of PS. Case No.-50 Year-2022 Thana- MADHEPURA COMPALINT CASE
District- Madhepura

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1. Kailash Yadav @ Basant Kumar S/o Kameshwar Yadav, Resident of Village- Gahumani P.S.- Singheshwar, District- Madhepura.
 2. Anti Yadav @ Anti Ramarav S/o Kameshwar Yadav, Resident of Village- Gahumani P.S.- Singheshwar, District- Madhepura.
 3. Shiban Yadav @ Shiv Narayan Yadav S/o Late Yadu Yadav, Resident of Village- Gahumani P.S.- Singheshwar, District- Madhepura.
 4. Shambhu Yadav @ Jay Prakash Narayan, S/o Shivam Yadav, Resident of Village- Gahumani P.S.- Singheshwar, District- Madhepura.
 5. Suryajit Yadav @ Surjeet Kumar S/o Shivam Yadav, Resident of Village- Gahumani P.S.- Singheshwar, District- Madhepura.
 6. Babul Yadav @ Babul Kumar S/o Kailash Yadav, Resident of Village- Gahumani P.S.- Singheshwar, District- Madhepura.
 7. Bijlee Yadav @ Abhishek Kumar S/o Kailash Yadav, Resident of Village- Gahumani P.S.- Singheshwar, District- Madhepura,

... .. Appellant/s

Versus

1. The State of Bihar.
2. Savita Devi W/o Shri Ravindra Ram Sakin, Resident of Village- Gahumani P.S.- Singheshwar, District- Madhepura.

... .. Respondent/s

Appearance :

For the Appellant/s : Mrs.Ruchi Mandal, Advocate
For the Respondent/s : Mr.Binay Krishna, Spl. PP

CORAM: HONOURABLE MR. JUSTICE CHANDRA SHEKHAR JHA
ORAL JUDGMENT

Date : 14-08-2024

1. Heard learned counsel for the appellants and
learned Special P.P. for the State.

2. This appeal has been filed for setting aside
the order dated 25-09-2023 passed by learned Addl.
District and sessions Judge Ist cum special Judge,
Madhepura in SC/ST (Comp.) Case No. 50/2022,



whereby the learned trial court has taken cognizance of the matter under Sections- 341, 323, 354(B), 504 of the IPC as well as sections- 3 (1) (r) and (s) of The Scheduled Castes and Scheduled Tribes (prevention of Atrocities) Act 1989. These appellants have not filed any such appeal against the order dated 25-09-2023 earlier before this Hon'ble Court. However, the appellants filed a criminal revision application bearing CR REV No- 820/2023 which has been held to be not maintainable by one of learned co-ordinate Bench vide order dated 19-02-2024 with liberty to file an appeal.

3. Hence, this appeal was preferred in view of provision as available under Section 14(3)A of SC/ST Act.

4. Learned Special PP Mr. Binay Krishna, during the course of proceeding, placed service report, of notice, issued to opposite party no. 2 which was taken on record. It appears that despite of service of notice, in terms of order dated 04.07.2024, informant/respondent



no. 2 failed to join the present proceeding.

5. The case of prosecution in brief speaks that the appellants had entered the house of opposite party no. 2 on 11.11.22 at about 1.00 PM, when she was about to go for her daily ritualistic worship at her residence. It alleged further that appellants molested her and also made an attempt to tear her cloths and looted her belongings. Abusing by caste name is also available.

6. Mrs. Ruchi Mandal, learned counsel appearing on behalf of the appellants submitted that entire allegation appears to be raised in the background of land dispute, which is civil in nature, where present criminal complaint case was registered only with ulterior and oblique motive with harassing attitude. In support of the submissions learned counsel relied upon the 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. It is submitted that the strip of land in question, admittedly not claimed with any proof by the respondents as it appears from bare perusal of complaint petition. No members of the public was present besides their own family, when the accused/appellants alleged to abuse by caste name.

8. While concluding the argument learned counsel submitted that from the narration of complaint petition nothing appears, *prima facie*, being indicative of the fact that the present occurrence took place out of atrocities as defined under SC/ST (POA) Act, 1989. In support of the submissions learned counsel relied upon the report of Hon'ble Supreme Court in the case of ***Gulam Mustafa Vs. State of Karnataka and Another*** as reported in ***(2023) SCC OnLine SC 603***.

It is also submitted that complaint petition is not suggesting any dishonest intention made by the appellants to make O.P. No. 2 landless and as such no, *prima facie*, case as alleged made out from complaint. It



is submitted that complaint petition is not supported by affidavit, and is also not appears that any attempt was made to lodge this case with police.

9. It would be apposite to reproduce the para nos. 30 and 31 of the ***Priyanka Srivastava Case (supra)***, which reads as under:-

30. In our considered opinion, a stage has come in this country where Section 156(3) CrPC applications are to be supported by an affidavit duly sworn by the applicant who seeks the invocation of the jurisdiction of the Magistrate. That apart, in an appropriate case, the learned Magistrate would be well advised to verify the truth and also can verify the veracity of the allegations. This affidavit can make the applicant more responsible. We are compelled to say so as such kind of applications are being filed in a routine manner without taking any responsibility whatsoever only to harass certain persons. That apart, it becomes more disturbing and alarming when one tries to pick up people who are passing orders under a statutory provision which can be challenged under the framework of the said Act or under Article 226 of the Constitution of India. But it cannot be done to take undue advantage in a criminal court as if somebody is determined to settle the scores.

31. We have already indicated that there has to be prior applications under Sections



154(1) and 154(3) while filing a petition under Section 156(3). Both the aspects should be clearly spelt out in the application and necessary documents to that effect shall be filed. The warrant for giving a direction that an application under Section 156(3) be supported by an affidavit is so that the person making the application should be conscious and also endeavour to see that no false affidavit is made. It is because once an affidavit is found to be false, he will be liable for prosecution in accordance with law. This will deter him to casually invoke the authority of the Magistrate under Section 156 (3). That apart, we have already stated that the veracity of the same can also be verified by the learned Magistrate, regard being had to the nature of allegations of the case. We are compelled to say so as a number of cases pertaining to fiscal sphere, matrimonial dispute/family disputes, commercial offences, medical negligence cases, corruption cases and the cases where there is abnormal delay/laches in initiating criminal prosecution, as are illustrated in Lalita Kumari [(2014) 2 SCC 1 : (2014) 1 SCC (Cri) 524] are being filed. That apart, the learned Magistrate would also be aware of the delay in lodging of the FIR.

10. 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."

11. It would be further apposite to reproduce



the paragraph no. 34 of **Gulam Mustafa Case**
(supra), which reads as under :-

34. Insofar and inasmuch as interference in cases involving the SC/ST Act is concerned, we may only point out that a 3-Judge Bench of this Court, in *Ramawatar v. State of Madhya Pradesh*, 2021 SCC OnLine SC 966, has held that the mere fact that the offence is covered under a '*special statute*' would not inhibit this Court or the High Court from exercising their respective powers under Article 142 of the Constitution or Section 482 of the Code, in the terms below:

"15. Ordinarily, when dealing with offences arising out of special statutes such as the SC/ST Act, the Court will be extremely circumspect in its approach. The SC/ST Act has been specifically enacted to deter acts of indignity, humiliation and harassment against members of Scheduled Castes and Scheduled Tribes. The SC/ST Act is also a recognition of the depressing reality that despite undertaking several measures, the Scheduled Castes/Scheduled Tribes continue to be subjected to various atrocities at the hands of upper-castes. The Courts have to be mindful of the fact that the SC/ST Act has been enacted keeping in view the express constitutional safeguards enumerated in Articles 15, 17 and 21 of the Constitution, with a twin-fold objective of protecting the members of these vulnerable communities as well as to provide relief and rehabilitation to the



victims of caste-based atrocities.

16. On the other hand, where it appears to the Court that the offence in question, although covered under the SC/ST Act, is primarily civil or private where the alleged offence has not been committed on account of the caste of the victim, or where the continuation of the legal proceedings would be an abuse of the process of law, the Court can exercise its powers to quash the proceedings. On similar lines, when considering a prayer for quashing on the basis of a compromise/settlement, if the Court is satisfied that the underlying objective of the SC/ST Act would not be contravened or diminished even if the felony in question goes unpunished, the mere fact that the offence is covered under a 'special statute' would not refrain this Court or the High Court, from exercising their respective powers under Article 142 of the Constitution or Section 482 Cr. P.C."

12. In view of aforesaid factual and legal discussions, it appears that dispute between the parties are land disputes, for which, civil remedies are available. The narration of complaint is not suggesting that even any abuse was made in caste name where it appears, *prima facie*, that cognizance under SC/ST (POA) Act, 1989 was taken only for the reason that O.P.No.



2/informant belongs to SC Community, and is not out of atrocities as defined within the meaning of the SC/ST Act.

13. Accordingly, by taking guiding legal note as available through ***Usha Chakraborty case (supra)*** and *also* ***Gulam Mustafa case (supra)***, impugned order of cognizance dated 25.09.2023 with all its consequential proceedings, *qua*, all above named appellants in connection with SC/ST (Comp.) Case No. 50/2022 pending before learned learned Upper District and sessions Judge Ist cum special Judge, Madhepura is hereby quashed and set aside.

14. The appeal stands allowed.

15. Let a copy of this judgment be sent to learned Trial Court, immediately.

(Chandra Shekhar Jha, J)

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AFR/NAFR	NAFR
CAV DATE	NA
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