

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.20133 of 2017

Arising Out of PS. Case No.-54 Year-2007 Thana- NAYAGAON District- Saran

SUMAN KUMAR PANDEY @ SUMAN PANDEY son of Late Narsingh Dutt Pandey, resident of Village- Naya Gaon, P.s.- Naya Gaon, District- Saran.

... .. Petitioner/s

Versus

1. The State of Bihar.
2. Chanda Devi, wife of Sri Arun Kumar, resident of Village- Chagan, P.S.- Kudhani, District- Muzaffarpur, at present Village- Naya Gaon, P.S.- Naya Gaon, District- Saran.

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Mukesh Kumar Singh, Advocate
For the Opposite Party/s : Mr. Navin Kumar Pandey, APP

CORAM: HONOURABLE MR. JUSTICE CHANDRA SHEKHAR JHA
ORAL JUDGMENT

Date : 08-04-2024

1. Heard learned counsel appearing on behalf of the parties.

2. The present application has been filed for quashing the order dated 04.11.2009 passed by learned A.C.J.M., Chapra, Saran, in connection with Naya Gaon P.S. Case No. 54 of 2007 corresponding to Inquiry No. 171 of 2009 (U.T. 256/2009), where cognizance was taken for the offences under sections 392, 436, 427,



354 of the Indian Penal Code.

3. Prosecution case in brief is that Chanda Devi (Opposite party No.2) filed Complaint Case No. 2701 of 2007, in the court of Chief Judicial Magistrate, Saran, Chapra on 23.8.2007 which was sent to the concerned police station on the basis of which Nayagaon P.S. Case No. 54 of 2007 was registered. Gist of the case is as follows:-

Father, brother and grand father of the informant were sent jail in connection with concocted case by police on 9.8.2007, thereafter, informant called her husband from Muzaffarpur and on 10.8.2007 at about 11 A.M., while she was preparing breakfast, all the accused persons came there and started abusing on her caste name and also tried to outrage her modesty and Manan Pandey fired from his pistol, targeting Arun Kumar, who escaped unhurt, then the accused persons set her old house on fire and committed theft in her house and cut many trees including Sagwan tree and



also taken away iron bars and cement.

4. It is submitted by learned counsel appearing for the petitioner that after investigation, police submitted final report exonerating petitioner, which was accepted by learned trial court on 02.09.2008. It is pointed out that final report was submitted as mistake of facts. It is also pointed out that once the fact during investigation, found incorrect, merely on the basis of protest, finding case true, *prima facie* for the purpose of cognizance is bad in eyes of law, particularly in a circumstance, when the different view taken by learned Jurisdictional Magistrate *qua* finding of investigation is without any reason. It is further pointed out by learned counsel that this FIR is instituted on the basis of complaint case no. 2701 of 2007, which was filed on 23.08.2007 for the occurrence dated 10.08.2007 i.e. after 13 days, in a very planned and formulated manner, admittedly, having previous enmities, where elder brother of petitioner alleged to be murder by brother,



grand-father and father of the opposite party no. 2. It is submitted that as a retaliatory measures with ulterior and oblique motive, the present false criminal case was lodged purely on imaginary grounds.

5. Learned counsel relied upon a legal report of Hon'ble Supreme Court in the matter of ***State of Haryana and Ors. Vs. Bhajan Lal and Ors.***, reported in ***1992 Supp (1) Supreme Court Cases 335***, also in the matter of ***Ratan Lal Patel Vs. Dr. Hari Singh Gour Vishwavidyalaya***, reported in ***(2022) 6 SCC 540***.

6. Learned APP while opposing the application submitted that the complainant affirmed the occurrence on oath. It is further submitted that during enquiry, other witnesses also supported the occurrence and merely on the ground of previous enmities, it cannot be said that cognizance is bad in eyes of law and same has been lodged as retaliatory measures.

7. For the purpose of convenience, it would be



apposite to reproduce the order dated 04.11.2009 for better understanding of this case, which is as under:-

"4.11.09 परिवादनी की हाजरी दी गयी है वादआज आदेश हेतु निमत है। अभिलेख आदेश हेतु प्रस्तुत किया गया।

यह परिवाद पत्र परिवादी चन्दा देवी के द्वारा परिवाद पत्र में अंकित अभियुक्तगण 1. मनन पाण्डेय 2. सुमन पाण्डेय 3. बुद्धदेव मिश्रा 4. दिलीप मिश्रा 5. मनोज कुमार मिश्रा के विरुद्ध दाखिल किया गया है न्यायालय द्वारा परिवादिनी का शपथ पर ब्यान अंकित किया गया तथा जांच के कम मे परिवादनी की ओर से जांच साक्षी सं० 1 पूजा भारती 2. अरुण कुमार 3. संजय कुमार झा का जांच साक्ष्य करया गया है जिन्होंने अपने अपने जांच साक्ष्य से परिवाद पत्र एवं परवादनी के शपथ पर दिये गये ब्यान का समर्थन किये हैं

परिवाद पत्र परिवादनी के शपथ पर ब्यान जांच साक्षियों के साक्ष्य के अवलोकन में उपरान्त मैं पाता हूँ कि परिवाद पत्र में नामांकित अभियुक्त गण 1. मनन पाण्डेय 2. सुमन पाण्डेय 3. बुद्धदेव मिश्रा 4. दिलीप मिश्रा 5. मनोज कुमार मिश्रा के विरुद्ध धारा 392, 436, 354, भा०दं०वि० के अंतर्गत प्रथम द्रष्टया माला बनना प्रतीत होता है। अभियुक्तों के विरुद्ध प्रयाप्त आधार उपलब्ध है ऐसी परिस्थिति में अभियुक्तों को बिचारण हेतु आहुत किया जाता है।

अतः, परिवादिनी को निदेश दिया जाता है कि एक सप्ताह के अंदर अपेक्षित दाखिल करे। परिवादिनी के द्वारा अपेक्षित दाखिल करने के उरांत कार्यालय अभियुक्तों के विरुद्ध सम्मन निर्गत करे। वाद दिनांक 5.1.010 को उपस्थापित हेतु

लेखापित

न्या० दण्डा०

8. It would be apposite to re-produce para 102



of the ***State of Haryana and Ors. Vs. Bhajan Lal and Ors.***, reported in ***1992 Supp (1) Supreme Court Cases 335***, 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.”

9. It would further be apposite to re-produce



para nos. 4, 5 and 6 of the ***Ratan Lal Patel Vs. Dr. Hari Singh Gour Vishwavidyalaya***, reported in ***(2022) 6 SCC 540***, which reads as under:-

"4. Having considered the impugned order, it can be seen that the impugned order allowing the review application is a cryptic, non-reasoned and non-speaking order. Nothing has been mentioned and/or observed as to what was that error apparent on the face of the record which called for interference. It cannot be disputed that the review jurisdiction can be exercised only in a case where it is found that there is an error apparent on the face of the record and not otherwise. Therefore, while exercising the review jurisdiction, the Court has to first satisfy itself on any error apparent on the face of the record which calls for exercise of the review jurisdiction.

5. Merely stating that there is an error apparent on the face of the record is not sufficient. It must be demonstrated that in fact there was an error apparent on the face of the record. There must be a speaking and reasoned order as to what was that error apparent on the face of the record, which called for interference and therefore a reasoned order is required to be passed. Unless such reasons are given and unless what was that error apparent on the face of the record is stated and mentioned in the order, the higher forum would not be in a position to know what has weighed with the Court while exercising the review jurisdiction



and what was that error apparent on the face of the record.

6. In the present case, except stating that "it is noticed that there is apparent error on the face of record which calls for interference", nothing has been mentioned on what was that error apparent on the face of the record. Therefore, the impugned order, allowing the review application being a cryptic and non-reasoned order, the same is unsustainable in law and deserves to be quashed and set aside. Hence, the matter is to be remanded to the Division Bench of the High Court to decide the review application afresh, in accordance with law and on its own merits and within the parameters of the review jurisdiction and to pass a speaking and reasoned order."

10. In view of aforesaid factual and legal submission, it appears that the learned Jurisdictional Magistrate did not supply any speaking reasons while taking different view with finding of investigation, where police exonerate petitioner by submitting charge-sheet as mistake of facts, accordingly, impugned order of cognizance dated 04.11.2009 passed by learned A.C.J.M., Chapra, Saran is hereby set aside and quashed with a direction to learned trial court to pass a fresh and



speaking order in accordance with law.

11. Let copy of this order be sent to the trial
court, without delay.

(Chandra Shekhar Jha, J)

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AFR/NAFR	NAFR
CAV DATE	NA
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