IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.26240 of 2023

Arising Out of PS. Case No.-281 Year-2017 Thana- BIRPUR District- Supaul

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1. Arvind Thakur @ Arvind Kr. Thakur Son Of Daya Nand Thakur @ Daya Nand R/O- 295, Mirapur Road, P.O - Bhatta Nagar, Lilwa, Howrah, Kolkata, Presently Posted As Zonal Head, Universal Sompo General Insurance Co. Ltd., 42 A Shakespeare Sarani, Kolkata-700017
2. Sabhajeet Singh Son Of Sri Kali Prasad Singh @ Kali Sahay Singh R/O- 647/4D, Shiv Vihar, Sector-1, Jankipuram, Lucknow, Presently Posted As AVP- Marketing Universal Sompo General Insurance Co. Ltd. 1st Floor, Plot No. C 56A/13 , Sector 62 Noida 201309, Uttar Pradesh.
3. Swarochis Pandey @ Swarochis K. Pandey, son of Sri Rama Shankar @ Ramashankar Pandey R/O 481/49, Mohan Meakin Road, Daliganj Road, Lucknow, Presently Posted As Zonal Claims Mangarer, Universal Sompo General Insurance Co. Ltd. Office No. 302 A And 302 B, 3rd Floor, Shalimar Logix, 4 Rana Pratap Marg, Lucknow.

... ... Petitioners

Versus

1. The State of Bihar
2. Dilip Kumar, son of Lt. Chaturbhuj Prasad Singh R/O Bajrang Puri, Saheed Bhagat Singh Path, Road No, 4, Ps- Alamganj, Dist- Patna, At Present Residing At Kosi Colony, Ward No. 2 Ps- Birpur Distt- Supaul.

... ... Opposite Parties

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Appearance :

For the Petitioners	:	Mr.P.N. Shahi, Sr. Advocate
		Mr.Durgesh Kumar Singh, Advocate
		Mr.Abhijit Kumar Singh, Advocate
		Ms.Anjana Sinha, Advocate
For the State	:	Mr.Sanjay Kumar Tiwary, APP
For the O.P. No.2	:	Mr.Rajesh Kumar Sharma, Advocate
		Mr.Shashank Shekhar, Advocate
		Mr.Chitragupta, Advocate
		Mr.Ashwani Raj Narayan, Advocate

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CORAM: HONOURABLE MR. JUSTICE CHANDRA SHEKHAR JHA

ORAL JUDGMENT

Date : 23-04-2024

Heard Mr. P.N. Shahi, learned senior counsel assisted by Mr. Durgesh Kumar Singh, learned counsel for the petitioners, learned A.P.P. for the State and Mr. Rajesh Kumar Sharma, learned counsel appearing on behalf of opposite party no. 2.

2. This application has been filed for quashing the order dated 14.11.2022 passed by learned Additional Chief Judicial Magistrate, Birpur in G.R. No. 718/2017, Birpur P.S. Case No. 281/2017 dated 19.10.2017 arising out of Complaint Case No. 376C/2017 dated 16.10.2017 whereby and whereunder learned Jurisdictional Magistrate has taken cognizance against the petitioners for the offence under Sections 406, 420, 468, 471, 385 & 120-B of the Indian Penal Code (in short the 'I.P.C.').

<u>The Facts of the Case</u>

3. The brief facts of the case is that one Mr. Dilip Kumar, a police officer, filed a complaint which was referred to the police, on the basis of which aforementioned police case has been instituted alleging therein that that the informant had purchased a car bearing Registration No. BR-01CW-9349, from "Brij Honda", Patna in his name by taking Bank loan and the same was insured by M/s Universal

Sompo General Insurance Co. Ltd. (hereinafter referred to as the "Insurance Company"). The informant was informed by Brij Honda, dealer of car, that in case of accident and damage, the vehicle is to be sent to any Service Centre of Honda and rest process/formalities would be done by the Honda Company itself. Though, said insurance policy was costly, but on seeing the benefits of the policy, it was taken and required premium was paid. On 11.03.2017, in order to save animals, the insured vehicle dashed to the railing of the Kamla Balan Bridge near Jhanjharpur, in which it was badly damaged, wherein informant's wife received several injuries. It is alleged that on 14.03.2017, the informant informed the Brij Honda regarding accident and on the same day he also informed the insurance company on toll free number, thereafter he was informed that since the car is Honda assured, he need to take his car to the nearest Honda Service Centre, where all claim settlement would be done by the Honda Service Centre, but neither complain number nor intimation number was given to him. On 23.04.2017, the informant sent his car to the M/s Prashant Honda Service

Centre at Muzaffarpur, where officials of the Centre at Muzaffarpur told him that he has to sign an agreement that in case of total loss settlement, he would pay 2% of the amount and on non-signing the same, claim would not be referred, thereafter the informant refused to sign the agreement. Anyhow, claim was submitted by M/s Prashant Honda Service Centre on 14.06.2017 and informant was intimated that his claim has been intimated to the insurance company vide Claim No. CL 17023598 and one Surveyor namely, Navin Bhusan (co-accused) has been deputed for aforesaid purpose. It is alleged that said surveyor informed that there is a claim of Rs. 5.5 L and if informant pays Rs. 50,000/- to him, only then claim would be forwarded to the insurance company. The informant further alleged that he informed the Manager (co-accused) and the petitioners regarding the act of the surveyor, as he demanded Rs. 50,000/- otherwise his claim would be rejected. On 21.07.2017, he reached at Patna office and met one Mr. Nirbhik Yadav and he made him talk with Swrochis Pandey (petitioner no.3), Assistant Manager and informed them regarding the happenings. It is further alleged that even after waiting for 15 days, when there is no intimation in respect of settlement of claim, he intimated his grievance through e-mail, to the officials, giving brief details and demanded justice, thereafter Manager Claim, Lucknow contacted him and said that Mr. Swarochis Pandey (petitioner no. 3) would get in touch with him and will look after his problem. It is alleged that on 30.08.2017, claim of the informant was rejected. Feeling aggrieved, as he had been cheated by Insurance Company, he filed complaint, as aforesaid, which was registered as police case, upon sending the complaint to Birpur Police Station by learned jurisdictional Magistrate, by exercising power under Section 156(3) of the Code of Criminal Procedure (in short the "Cr.P.C.").

Submission of the Petitioners

4. Mr. P.N. Shahi, learned senior counsel for the petitioners submitted that petitioners have been falsely implicated in this case as no occurrence, as alleged in the F.I.R., has ever taken place. Learned senior also submitted that informant is a police official and nobody will believe that demand of bribe can be made from a police official. Learned counsel submits that from perusal of the terms and conditions of the insurance policy, it will appear that intimation in respect to the loss and damage, if any, is to be intimated to the insurer at the earliest.

5. Learned senior counsel submits that the date of accident, as per the case of the informant, is 11.03.2017, where letter dated 04.06.2017 of complainant reflects that there was no intimation to the insurer till then. Thus, there is delay, as regards to intimation of accident, is more than three months. Learned senior counsel further submitted that after intimation, surveyor was deputed, who submitted his report dated 08.08.2017. A copy of the surveyor's report is annexed as Annexure **'6'**. From perusal of the report, it appears that cause of accident, as mentioned in the claim form, occurrence and damages to the claimed vehicle is not possible due to the reasons as narrated by the insured. Thereafter, a letter was issued by the insurance company to the informant by saying that being a major loss, an

Investigator Mr. Saroj Jha has been appointed for the purpose.

6. Learned senior counsel further submits that vide letter dated 08.08.2017, clarification was also sought for from the informant regarding delay in intimation with documentary support, discharge card, treatment details, cause of accident, towing receipt, claim intimation reference number of call centre and issue of demand of 2% by the Honda Service Centre, as alleged by the informant, is also clarified in it's letter. Thereafter, vide letter dated 30.08.2017, claim of the informant was repudiated.

7. In support of his submission, learned senior counsel relied upon the legal reports of Hon'ble Supreme Court as reported in the case of **Usha Chakraborty and Anr. V. State of West Bengal and Anr. [2023 SCC Online SC 90]; R. Kalyani vs Janak C. Mehta & Ors [2009 (1) SCC 516]; Priyanka Srivastava Vs. State of Uttar Pradesh [2015 (6) SCC 287]; Sushil Sethi and Another vs. State of Arunachal Pradesh and Ors. [(2020) 3 SCC 240].** Learned senior counsel further submitted that it is a classical case of malicious prosecution and in support relied upon the legal report of Hon'ble Supreme Court, as reported in the matter of **State of Haryana and Ors. Vs. Bhajan Lal and Ors [(1992) Supp (1) SCC 335].** Learned senior counsel further relied upon the judgment of this Hon'ble Court, as reported in the matter of **Oriental Insurance Company Limited Vs. State of Bihar** reported as **2004 (2) PLJR 458.**

8. From the aforesaid legal reports of Hon'ble Supreme Court as well as this Hon'ble Court, learned senior counsel emphasized, as the 'Insurance Company' was not arrayed as an accused to cover-up legal fiction as to established vicarious liability of the petitioners being higher rank officials of the Insurance Company, this case is fit to be quashed. It is also submitted by Mr. Shahi, learned senior counsel that the complaint petition bearing No. 376C/2017, which is the basis of present F.I.R. is not supported by any affidavit which appears contradictory to the legal report as mandate through **Priyanka Srivastava** case (supra).

9. It is submitted by learned senior counsel that petitioner no. 1 was posted at Kolkata, petitioner nos. 2 and 3 were posted at Lucknow at the time of occurrence, where the narration of entire complaint, failed to suggest any *prima-facie* case, as alleged, against any of the petitioners by any prudent way of imagination. This case is a classical case for malicious prosecution as to harass petitioners with oblique and ulterior motive, being higher rank officials of Insurance Company and on this score alone, cognizance order is liable to be quashed and set-aside.

10. While Concluding argument, Mr. Shahi, learned senior counsel submitted that, present complaint was filed in the background of dishonouring the claim by Insurance Company, where petitioners after intimation of repudiation by letter dated 30.08.2017, approached the District Consumer Commission, Patna, bearing Complaint Case No. 107 of 2019, where the matter is still pending. By and large, the dispute is civil in nature and the present criminal prosecution is only to give a criminal colour to the allegation which is not supporting the *prima-facie* legal ingredients as there is no dishonest intention from very inception of the offences for which cognizance was taken by the learned jurisdictional Magistrate through the impugned order.

Submission of Opposite Party No. 2.

11. Learned counsel appearing on behalf of the opposite party no. 2 submitted that the petitioners are vicariously liable for the act of the 'Insurance Company' being higher rank officials. It is submitted that there is breach of agreement *qua* terms and conditions of insurance policy between the 'Insurance Company' and opposite party no. 2, which opposite party no. 2 was forced to obtain on false pretext and, as such, the intention of cheating was available from very inception. It is also submitted by learned counsel that after accident wife of opposite party no. 2 was hospitalized for several days and therefore, initially, the claim was lodged with some delay. It is also submitted that the surveyor demanded Rs. 50,000/- as a bribe to approve the claim which was in knowledge of petitioners and, as such, a criminal liability accrued to them and, therefore, the cognizance order cannot be said bad in the eyes of law.

Relevant Legal Ratio:

12. It would be apposite to reproduce para '24', '25' and '26' of the judgment of this Hon'ble Court in the case of **Oriental Insurance Company Limited** (supra), which are as under:

> "**24**. Whether on representation of the officials of the petitioner-company or on request of the complainant, it is an admitted position that the complainant took the policy for the first time in 1992. The policy was renewable every year and it was renewed every year up to the year 1999-2000. Mens rea is an integral part of every criminal offence.
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> In the case of cheating or misappropriation or breach of trust or the like the intention to cheat or misappropriate the money or commit breach of trust must be shown to be in existence at the very beginning of the transaction. It is only then that the liability of the person concerned can be said to be criminal. This is what distinguishes criminal liability from civil liability.
>
> Where a person enters into agreement intending to cheat him or so on, repudiation of the agreement may constitute criminal offence but where there is no such criminal intention at the beginning but on any ground or for a reason he thinks relevant and adequate, he repudiates the agreement it may give rise to civil liability simpliciter and his prosecution in such a case would be an abuse of the process of the Court. There is no allegation in the instant case that between 1992 and 1999 there was any intention on the part of the petitioner-company and its officials to cheat the complainant or misappropriate the money. A dishonest intention is the soul of these offences. In terms of definition of 'dishonestly' under Section 24 of the Indian Penal Code, any act done with intention of causing wrongful gain to oneself or wrongful loss to another is said to do that thing dishonestly. In other words, intention to cause wrongful gain to oneself and wrongful loss to another must be there at all times. If there was no such intention at the beginning, even if it be assumed that the person subsequently intended to cause wrongful

gain to oneself, it would not bring the act within the mischief of a criminal offence.

25. Soliciting of business is normal phenomenon in commercial world which is also true of insurance business. Every year hundreds and thousands of insurance policies are issued to customers as a routine. Dispute may arise between the parties in future but it does not mean that officials on whose representation/inducement to customers to take policy intended to cause wrongful gain to the company or themselves and wrongful loss to the customers.

26. In the instant case the decision to repudiate the policy was based on the findings of the Surveyor and Investigators based on the meteorological reports. Under Section 64 UM(2) of the Insurance Act no claim in respect of a loss shall (unless otherwise directed by the controller) be admitted for payment or settled by the insurer unless he has obtained a report on the loss that has occurred from a person who holds a licence issued under that Section to act as a surveyor or loss assessor. The decision to reject the claim was in consonance with the report of Surveyor and Loss Assessor/Investigator. It does not appear in the facts and circumstances that there was any criminal intention i.e. mens rea on the part of the concerned officials of the petitioner-company to cheat the complainant or misappropriate money so as to make them liable for prosecution. I am satisfied in the circumstances that the petitioners' prosecution would be an abuse of the process of the Court and it is a fit case in which this Court should exercise inherent powers under Section 482 of the Criminal Procedure Code to quash the same."

13. It would also be apposite to reproduce paragraph **'30' and '31'** of the legal report of Hon'ble Supreme Court in the case of **Priyanka Srivastava** (supra), which are being reproduced hereunder for a ready reference:

"**30**. In our considered opinion, a stage has come in this country where Section 156(3) Cr.P.C. 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 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 Section 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 the application under Section 156(3) be supported by an affidavit 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 are being filed. That apart, the learned Magistrate would also be aware of the delay in lodging of the FIR."

14. In paragraph '41' of **R. Kalyani** case, the Hon'ble Supreme Court has held as under:

"41. If a person, thus, has to be proceeded with as being variously liable for the acts of the company, the company must be made an accused. In any event, it would be a fair thing to do so, as legal fiction is raised both against the company as well as the person responsible for the acts of the company."

15. It would be apposite to reproduce Para- 7.2, 7.5, 8.1 and 8.2 of **Sushil Sethi Case** (supra), which runs as under:-

"**7.2.** In *Vesa Holdings (P) Ltd.* v. *State of Kerala*, [(2015) 8 SCC 293] , it is observed and held by this Court that every breach of contract would not give rise to an offence of cheating and only in those cases breach of contract would amount to cheating where there was any deception played at the very inception. It is further observed and held that for the purpose of constituting an offence of cheating, the complainant is required to show that the accused had fraudulent or dishonest intention at the time of making promise or representation. It is further observed and held that even in a case where allegations are made in regard to failure on the part of the accused to keep his promise, in the absence of a culpable intention at the time of making initial promise being absent, no offence under Section 420 IPC can be said to have been made out. It is further observed and held that the real test is whether the allegations in the complaint disclose the criminal offence of cheating or not.

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7.5. In *Sharad Kumar Sanghi* v. *Sangita Rane*, [(2015) 12 SCC 781], this Court had an occasion to consider the initiation of criminal proceedings against the Managing Director or any officer of a company where company had not been arrayed as a party to the complaint. In the aforesaid decision, it is observed and held by this Court that in the absence of specific allegation against the Managing Director of vicarious liability, in the absence of company being arrayed as a party, no proceedings can be initiated against such Managing Director or any officer of a company. It is further observed and held that when a complainant intends to rope in a Managing Director or any officer of a company, it is essential to make requisite allegation to constitute the vicarious liability.

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8.1. As observed hereinabove, the charge-sheet has been filed against the appellants for the offences under Section 420 read with Section 120-B IPC. However, it is required to be noted that there are no specific allegations and averments in the FIR and/or even in the charge-sheet that fraudulent and dishonest intention of the accused was from the very beginning of the transaction. It is also required to be noted that contract between M/s SPML Infra Limited and the Government was for supply and commissioning of the Nurang Hydel Power Project including three power generating units. The appellants purchased the turbines for the project from another manufacturer. The company used the said turbines in the power project. The contract was in the year 1993. Thereafter in the year 1996 the project was commissioned. In the year 1997, the Department of Power issued a certificate certifying satisfaction over the execution of the project. Even the defect liability period ended/expired in January 1998. In the year 2000, there was some defect found with respect to three turbines. Immediately, the turbines were replaced. The power project started functioning right from the very beginning —1996 onwards. If the intention of the company/appellants was to cheat the Government of Arunachal Pradesh, they would not have replaced the turbines which were found to be defective. In any case, there are no specific allegations and averments in the complaint that the accused had fraudulent or dishonest intention at the time of entering into the contract. Therefore, applying the law laid down by this Court in the aforesaid decisions, it cannot be said that even a prima facie case for the offence under Section 420 IPC has been made out.

8.2. It is also required to be noted that the main allegations can be said to be against the company. The company has not been made a party. The allegations are restricted to the Managing Director and the Director of the company respectively. There are no specific allegations against the Managing Director or even the Director. There are no allegations to constitute the vicarious liability. In ***Maksud Saiyed* v. *State of Gujarat* [*Maksud Saiyed* v. *State of Gujarat*, (2008) 5 SCC 668 : (2008) 2 SCC (Cri) 692]** , it is observed and held by this Court that the Penal Code does not contain any provision for attaching vicarious liability on the part of the Managing Director or the Directors of the company when the accused is the company. It is further observed and held that the vicarious liability of the Managing Director and Director would arise provided any provision exists in that behalf in the statute. It is further observed that the statute indisputably must contain provision fixing such vicarious liabilities. It is further observed that even for the said purpose, it is obligatory on the part of the complainant to make requisite allegations which would attract the provisions constituting vicarious liability. In the present case, there are no such specific allegations against the appellants being Managing Director or the Director of the company respectively. Under the circumstances also, the impugned criminal proceedings are required to be quashed and set aside."

16. It would further be apposite to reproduce para '6', '7', '8' and '10' of the legal report of Hon'ble Supreme Court in the case of **Usha Chakraborty** (supra), which are being reproduced hereunder for a ready reference:

"6. In **Paramjeet Batra v. State of Uttarakhand [(2023) 11 SCC 673]**, 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 [(2015) 8 SCC 293]**, 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 [(2021) 5 SCC 524]**, 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.

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10. In **Neeharika Infrastructure Pvt. Ltd. v. State of Maharashtra [2021 SCC OnLine SC 315]**, 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 above 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."

17. Lastly, in paragraph No. '**102**' in the case of **Bhajan Lal** (supra), the Hon'ble Supreme Court held 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 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 Act concerned (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 Act concerned, 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."

Conclusion

18. In view of aforesaid legal and factual submissions, it appears that all aforesaid three petitioners are high rank officials of the 'Insurance Company'. It is admitted position that 'Insurance Company' has not arrayed as an accused in this case to established the vicarious liability of petitioners, where complaint suggest all accusations against Company. It is also appearing that the basis of present F.I.R. is the Complaint Case No. 376C/2017 which is not supported by affidavit. In instant case, claim was preferred after about three months of accident. Immediate after receiving information, Insurance Company appointed Surveyors. On the basis of Surveyor's report, claim of informant/opposite party no. 2 was repudiated, which was subject to review. Repudiation of claim is part and parcel of insurance policy, denying of which by company cannot be said to attract "dishonest intention" as to attract criminal liability, which is otherwise founded upon report of Surveyor.

19. The nature of allegation is limited to not honouring the claim petition which is by and large, civil in nature, for which, admittedly, a petition is pending before District Consumer Commission, Patna bearing Complaint Case No. 107/2019 for compensation. There is no iota of allegation is available against these petitioners, who are high rank Manager posted in different States through the present complaint petition as to make out any *prima-facie case,* as alleged and, as such, the present case on its face is appearing *prima-facie* nothing but a malicious prosecution only to harass the petitioners being higher rank officials of the 'Insurance Company'. Hence, by taking a guiding note of Hon'ble Apex Court in the matters of **Usha Chakraborty** case (supra), **Sushil Sethi** case (supra) and also by taking guiding note of the guideline nos. (1), (5) and (7) of **Bhajan Lal** case (supra), the impugned order taking cognizance dated 14.11.2022 passed by learned Additional Chief Judicial Magistrate, Birpur in G.R. No. 718/2017, Birpur P.S. Case No. 281/2017 dated 19.10.2017 arising out of Complaint Case No. 376C/2017 dated 16.10.2017 qua petitioners with all its consequential proceedings are hereby set-aside and quashed.

20. The present application stands allowed.

21. Let a copy of this judgment be sent to learned trial court forthwith.

(Chandra Shekhar Jha, J.)

Rajeev/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	29.04.2024
Transmission Date	29.04.2024