

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.30604 of 2016

Arising Out of PS. Case No.-808 Year-2012 Thana- MADHUBANI COMPLAINT CASE
District- Madhubani

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Kaushal Kumar Mishra, son of Late Pitambar Mishra, Resident of
Village- Umari, P.S.- Lakhnaur, District- Madhubani

... .. Petitioner

Versus

1. The State of Bihar
2. Md. Israel son of Late Baun, resident of Village- Umari, P.S.-
Lakhnaur, District- Madhubani.

... .. Opposite Parties

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Appearance :

For the Petitioner/s	:	Mr.Rajesh Ranjan, Advocate Ms.Kanika, Advocate Mr.Mohammad Farooq, Advocate
For the Opposite Party/s :		Mr.Dr. Kumar Uday Pratap, APP

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CORAM: HONOURABLE MR. JUSTICE CHANDRA SHEKHAR JHA
ORAL JUDGMENT

Date : 02-04-2024

Heard learned counsel for the petitioner and
learned A.P.P. for the State duly assisted by learned
counsel for the opposite party no. 2.

2. This application has been filed for quashing
the order dated 09.03.2016/10.03.2016 passed in Cr.
Rev. No. 12/2013/201/2013 by learned Sessions Judge,
Madhubani whereby and whereunder learned Sessions
Judge has dismissed the Revision application filed
against the order dated 12.03.2013 passed by learned
Judicial Magistrate, 1st Class, Jhanjharpur in C.R. Case
No. 808/2012 giving rise to E.R. No. 17/2012 by which
cognizance for the offence under Section 147, 323/34,



504/34 of the Indian Penal Code was taken and process was issued against the petitioner and other co-accused persons.

3. The brief facts of the case is that the opposite party no. 2 has filed complaint bearing C.R. Case No. 808/212, wherein he stated that on 07.06.2012, the petitioner alongwith other accused persons and unknown workers had entered into his orchard situated on Khesra No. 256(old), 343, 344, 345 and 342(new) in khata no. 91, village Umari. O.P. No. 2 further alleged that when he tried to stop for picking the mangoes from the trees, then all the accused persons threatened and assaulted him. He also alleged that accused persons had taken away mangoes worth Rs. 10,000/- and also cut a mango tree worth Rs. 30,000/-. O.P. No. 2 further states that he informed regarding occurrence to the higher officials, thereafter accused no. 1 alongwith other accused persons came at his house and assaulted him with butt of his service revolver. O.P. No. 2 further alleged that one of the co-accused entered into the house and taken away of Rs. 20,000/-.

4. It is submitted by learned counsel for the petitioner that opposite party no. 2 namely, Md. Israel



has died during pendency of the present application.

5. Taking note of the aforesaid submission, learned counsel appearing on behalf of the opposite party no. 2 submitted that now he is appearing for his son. The locus of son, in the present proceeding after death of opposite party no. 2, was disputed by learned counsel for the petitioner, as there is no provision for substitution in criminal proceeding.

6. Taking note of the merit of the case, it is submitted that the present criminal case was lodged only to give a criminal colour to civil dispute for which several litigations are pending between the parties. It is further submitted that allegation is appearing very much general and omnibus against the petitioner and is not *prima-facie* constituting any offence by way of any prudent imagination.

7. In support of his submission, learned counsel has relied upon paragraph Nos. 6 to 10 of the legal report of Hon'ble Supreme Court in the case of **Usha Chakraborty and Anr. V. State of West Bengal and Anr.** reported in **2023 SCC Online SC 90**, which are being reproduced hereunder for a ready reference:



6. In **Paramjeet Batra v. State of Uttarakhand**¹, 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**², 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**³, 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.

1. (2023) 11 SCC 673

2. (2015) 8 SCC 293

3. (2021) 5 SCC 524



9. In the decision in State of **Haryana v. Bhajan Lal**⁴, 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**⁵, a three Judge Bench of this Court laid down the following principles of law:—

4. 1992 Supp (1) SCC 335: AIR 1992 SC 604

5. 2021 SCC OnLine SC 315



*“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."

8. Considering the aforesaid factual and legal submission as stated hereinabove, as the present criminal complaint appears *prima-facie* instituted out of civil litigation between the parties, where *prima-facie* allegation *qua* assault is appearing very much general and omnibus against the petitioner and also by taking guiding note of legal report of Hon'ble Supreme Court in the case of **Usha Chakraborty** (supra), the



impugned order dated 09.03.2016/10.03.2016 passed in Cr. Rev. No. 12/2013/201/2013 passed by learned Sessions Judge, Madhubani is hereby quashed and set-aside with all it's consequential proceedings, *qua* petitioner.

9. This application is allowed.

10. Let a copy of this judgment be sent to learned trial court immediately.

(Chandra Shekhar Jha, J.)

Rajeev/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	03.04.2024
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