

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.36691 of 2016

Arising Out of PS. Case No.-195 Year-2014 Thana- LALIT NARAYAN UNIVERSITY
District- Darbhanga

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1. Bandana Mishra wife of Late Ashok Kumar Mishra
2. Anurag Gautam, Son of late Ashok Kumar Mishra,
Both residents of Mohalla-Denbey Road, P.S.-L.N.M. Vishwa Vidyalay,
Disrict-Darbhangha.

... .. Petitioners

Versus

1. The State of Bihar
2. Ashutosh Kumar Mishra, Son of Late Bindeshwari Prasad Mishra, resident
of Mohalla-Denbey Road, P.S.-L.N. Mishra, Vishwa Vidyalay, District-
Darbhanga, at present resident of House No.19, lane No.1, Gayatri Mandir
Road, P.O.-Singarauli, District-Singarauli (M.P.).

... .. Opposite Parties

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Appearance :

For the Petitioners	:	Mr. M.N. Parbat, Senior Advocate Mr. Praveen Prabhakar, Advocate Mr. Abhay Kumar Singh, Advocate
For the State	:	Mr. Shyameshwar Dayal, APP
For the Opposite Party No.2:		Mr. Rikesh Sinha, Advocate Mr. Dileep Kumar Singh, Advocate

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CORAM: HONOURABLE MR. JUSTICE CHANDRA SHEKHAR JHA
ORAL JUDGMENT

Date : 16-04-2024

Heard Mr. M.N. Parbat, learned senior counsel
appearing on behalf of the petitioners, Mr. Shyameshwar
Dayal, learned APP appearing on behalf of the State duly
assisted by Mr. Rikesh Sinha, learned counsel for the



opposite party no.2.

2. The present application has been filed for quashing the order taking cognizance dated 19.05.2015 passed by learned Chief Judicial Magistrate, Darbhanga in L.N.M. Vishwa Vidyalay P.S. Case No.195 of 2014 (Trial No.410 of 2016), whereby the learned Jurisdictional Magistrate has taken cognizance of offences punishable under Sections 341, 323, 448, 380, 504 and 506 read with 34 of the Indian Penal Code (for short 'IPC') against the petitioners.

3. The prosecution case is based upon the written application of one Ashutosh Kumar Mishra, informant/opposite party no.2, dated 27.08.2014 filed before the Officer-in-charge, L.N.M. Vishwa Vidyalay Police Station stating therein that his ancestral house is situated at Denbey Road, but he normally reside at Singarauli, in connection with his business activities. The informant has two brothers, one elder to him namely, Ashok Kumar Mishra, who died much before. The informant had put his lock in his share of house and reside there, whenever he visit to



Darbhanga. The informant/opposite party no.2 further alleged that on 13.07.2014, when he came at Darbhanga along with one Bimlesh Kumar Jha, son-in-law of his Late elder brother, he found lock of his room broken and his belongings were missing. His sister-in-law (*Bhabhi*), namely, Bandana Mishra (Petitioner No.1) and nephew Anurag Gautam (Petitioner No.2) abused him and asked to go from there. On protest of the informant, at their instance, two-three unknown persons present over there, started altercation and pushed him out from gate. His nephew threatened him to kill. The informant/opposite party no.2 further alleged that in the next morning, the informant informed about occurrence to the nearby respectable people, who tried to settle the matter at their best but, petitioner no.1 did not agree. Thereafter, the informant informed the police, who organized a meeting with petitioner No.1 on 17.07.2014, where petitioner No.1 Bandana Mishra promised that after concluding ongoing pooja (prayer ceremony), she would return the share of the informant and his belongings, but, later on, she retracted from her earlier



promise. She wants to grab his land fraudulently.

4. With aforesaid factual allegation, L.N.M. Vishwa Vidyalay P.S. Case No.195 of 2014 was registered against the petitioners, where after the investigation, the police has submitted charge-sheet for the offences under Sections 341, 323, 448, 380, 504 and 506 read with 34 of the IPC, where the learned Chief Judicial Magistrate, Darbhanga after perusal of records, took cognizance for the offences vide order dated 19.05.2015, which is impugned order and subject of present petition.

5. It is submitted by Mr. M.N. Parbat, learned senior counsel appearing on behalf of the petitioners that the present case is a classical example of malicious prosecution out of ulterior and oblique motive as just to give a criminal colour to civil dispute and on this score alone, the present proceeding is fit to be quashed and set aside. It is pointed out that from the face of FIR, no case as alleged to be made out against the petitioners, as admittedly petitioners are of the co-sharers of the disputed house living there with her family members. Mr. Parbat, further pointed out that



opposite party no.2 has approached the Bihar Land Disputes Redressal Forum (for short 'BLDR'), Darbhanga with supporting documents, which are also available with present petition through different annexures but, the possession and title of opposite party no.2 was not find favour, as the documents were not sufficient to pass any appropriate order on said issue. It is submitted that said order was passed on 10th of December, 2013. Getting frustrated with aforesaid order, on 27.08.2014, on the basis of imaginary grounds, the present criminal case was lodged, where face of FIR itself suggest several contradictory facts regarding the occurrence. In support of his submission, Mr. M.N. Parbat, learned senior counsel submitted that though in the first part of FIR, petitioners claimed to be in possession of the disputed house but, subsequently, it was authored that the share of house was assured to be given to informant/opposite party no.2 after completing puja ceremony, which was claimed to be concluded on 17.07.2014. It is further submitted by Mr. Parbat that the petitioners have filed a suit against representative of



Darbhangha Maharaj for execution of sale deed, which is pending before the court of Sub-Judge-I, Darbhanga, where opposite party no.2 also joined as a defendant-intervenor. It is further pointed out by learned senior counsel that entire FIR roaming around civil dispute, encroachment and share disputes, where for the alleged occurrence regarding breaking of lock, the informant is admittedly not an eye-witness. It is submitted that when through FIR, the opposite party no.2/informant himself disputing that his share was assured to be given after concluding puja i.e. after 17.07.2014, there is no question arising for taking of household articles by petitioners or any possession thereof as claimed, and, as such, the present FIR appears to be instituted maliciously with an ulterior motive for wreaking vengeance on the petitioners with a view to spite them out of private and personal grudge.

6. In support of the aforesaid submissions, learned senior counsel has relied upon the legal reports of Hon'ble Supreme Court as passed in the matters of **State of Haryana v. Bhajan Lal, [1992 Supp (1) SCC 335], G.**



**Sagar Suri v. State of U.P., [(2000) 2 SCC 636] and
Usha Chakraborty and Anr. v. State of West Bengal
and Anr. [(2023) SCC OnLine SC 90].**

7. *Per contra*, Mr. Rikesh Sinha, learned counsel appearing on behalf of opposite party no.2 submitted that merely on the ground as civil disputes are pending between the parties, a criminal case cannot be quashed by taking note of fact that it is maliciously instituted. It is submitted that opposite party no.2, was in possession of half of the portion of the house and he usually visited and reside in said portion of the house, whenever he came to Darbhanga. It is further pointed out by learned counsel that opposite party no.2 also deposited cash to the Maharaja's office, RD, Darbhanga along with petitioners suggesting that he is also one of the co-sharer of the said house but, when on one such occasion, he went to his house on 13.07.2014, the present occurrence came to his knowledge, as he found the lock of his house broken. It is pointed out that merely on the ground of civil disputes, the present occurrence cannot be denied, as police submitted charge-sheet against the



petitioners after thorough investigation, where the trial now initiated and almost three witnesses in this matter have been examined till now. While concluding argument, learned counsel for opposite party no.2 fairly submitted that opposite party no.2 has joined as a defendant-intervenor in civil suit pending before Sub-Judge-I, Darbhanga filed by the petitioners.

8. Taking a counter submission, Mr. Parbhat, learned senior counsel submitted that examination of two or three witnesses or even the commencement of trial after the framing of charge does not mean that a proceeding cannot be quashed by approaching High Court under Section 482 of the Code of Criminal Procedure (for short 'CrPC') or under Article 227 of the Constitution of India particularly, when no *prima facie* offence has been made out against accused/petitioners, which otherwise would amount to allowing the petitioners to undergo the agony of criminal trial. It is submitted that petitioners have approached this Court in August, 2016 only but, due to Covid-19 pandemic, this matter came first time on board only in October, 2023.



It is further submitted that when impugned order of cognizance is appearing bad in eyes of law, any further proceeding including framing of charge cannot be said just, and on said ground alone, quashing petition cannot be denied to entertain.

9. In aforesaid context, it would be apposite to reproduce Para-7, 8 and 9 of the legal report of Hon'ble Supreme Court passed in the matter of **G. Sagar Suri case (supra)**, which runs as under:-

"7. It was submitted by Mr Lalit, learned counsel for the second respondent that the appellants have already filed an application in the Court of Additional Judicial Magistrate for their discharge and that this Court should not interfere in the criminal proceedings which are at the threshold. We do not think that on filing of any application for discharge, the High Court cannot exercise its jurisdiction under Section 482 of the Code. In this connection, reference may be made to two decisions of this Court in *Pepsi Foods Ltd. v. Special Judicial Magistrate* [(1998) 5 SCC 749] and *Ashok Chaturvedi v. Shitul H. Chanchani* [(1998) 7 SCC 698] wherein it has been specifically held that though the Magistrate trying a case has jurisdiction to discharge the accused at any stage of the trial if he considers the charge to be groundless but that does not mean that the accused cannot



approach the High Court under Section 482 of the Code or Article 227 of the Constitution to have the proceeding quashed against them when no offence has been made out against them and still why must they undergo the agony of a criminal trial.

8. Jurisdiction under Section 482 of the Code has to be exercised with great care. In exercise of its jurisdiction the High Court is not to examine the matter superficially. It is to be seen if a matter, which is essentially of a civil nature, has been given a cloak of criminal offence. Criminal proceedings are not a short cut of other remedies available in law. Before issuing process a criminal court has to exercise a great deal of caution. For the accused it is a serious matter. This Court has laid certain principles on the basis of which the High Court is to exercise its jurisdiction under Section 482 of the Code. Jurisdiction under this section has to be exercised to prevent abuse of the process of any court or otherwise to secure the ends of justice.

9. In State of Karnataka v. L. Muniswamy [(1977) 2 SCC 699] this Court said that in the exercise of the wholesome power under Section 482 of the Code the High Court is entitled to quash a proceeding if it comes to the conclusion that allowing the proceeding to continue would be an abuse of the process of the court or that the ends of justice require that the proceedings are to be quashed."

10. It would further apposite to reproduce para-

102 of the legal report of Hon'ble Supreme Court decided in



the matter of **Bhajan Lal case (supra)**, which runs 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.”

11. It would further be apposite to reproduce para-6 of the legal report of Hon’ble Supreme Court as passed in the matter of **Usha Chakraborty Case (supra)**, which runs as under:-

“6. In *Paramjeet Batra v. State of Uttarakhand*, [(2013) 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.”

12. In view of aforesaid factual and legal submissions, it appears that the opposite party no.2/informant is not the eye-witness of the occurrence and no specific role was attributed to the petitioners *qua* breaking of lock or taking away the house-hold articles. The narration of FIR roping a thrust about civil dispute, where it appears that informant is struggling for his share in property for which, he has joined as a defendant-intervenor in Title Suit No.133 of 2015 pending before Sub-Judge-I, Darbhanga. The claim of the informant was also not appears to be entertained by Bihar Land Disputes Rederssal Forum, Darbhanga. Hence, by taking of allegation in totality out of the FIR, it is safe to gather *prima facie* that civil disputes between the parties specifically *qua* partition of the house in issue was given a criminal colour through present FIR, which not making any *prima facie* criminal liability *qua* petitioners. The case of petitioners appears to be covered under guideline nos. (1) and (7) of **Bhajan Lal case (supra)** and also by **Usha Chakraborty case (supra)**.

13. Accordingly, the impugned order of



cognizance dated 19.05.2015 passed by learned Chief
Judicial Magistrate, Darbhanga in L.N.M. Vishwa Vidyalay
P.S. Case No.195 of 2014 (Trial No.410 of 2016) *qua*
petitioners with all its consequential proceedings are, hereby,
quashed and set aside.

14. The application stands allowed.

15. Let a copy of the judgment be communicated
to the learned Trial Court forthwith.

(Chandra Shekhar Jha, J.)

Sanjeet/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	19.04.2024
Transmission Date	19.04.2024

