

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.31600 of 2016

Arising Out of PS. Case No.-750 Year-2009 Thana- SAHARSA COMPLAINT CASE
District- Saharsa

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1. Dhanik Yadav
 2. Jawahar Yadav
 3. Gholat Yadav @ Ramjee Yadav
 4. Ram Chandra Yadav
 5. Raj Kumar Yadav 1 to 5 are sons of Dorik Yadav
 6. Rohit Yadav
 7. Khelan Yadav
 8. Bharat Yadav 6 to 8 are sons of Dhanik Yadav All are resident of village - Godram, Police Station Basnahi, District - Saharsa

... .. Petitioner/s

Versus

1. State Of Bihar
2. Ganesh Yadav Son of Laksho Yadav resident of village - Godram, Police Station Basnahi, District - Saharsa

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Shashi Dhar Jha

For the Opposite Party/s : Mr. Jagdhar Prasad

CORAM: HONOURABLE MR. JUSTICE CHANDRA SHEKHAR JHA
ORAL JUDGMENT



Date : 15-05-2024

1. This is an application for quashing the order dated 14.05.2010 passed in Complaint Case No. 750C of 2009 by the Learned Judicial Magistrate, 1st Class, Saharsa, including entire proceeding of Complaint Case No. 750(C) of 2009 pending before Judicial Magistrate, 1st Class, Saharsa.

2. The brief fact of prosecution speaks that Complainant Ganesh Yadav has filed a complaint petition being Complaint Case No. 23C of 2007 before the learned Chief Judicial Magistrate, Saharsa alleging therein that the complainant purchased 5 decimal land from Bindeshwar Poddar on 03.06.2002 and the accused persons as named in complaint petition including petitioners by creating forged and fabricated documents tried to grab the land of the complainant and also demolished the house over the same and they have also looted away the articles kept in the house. The complaint petition send to the concerned Police Station under the provision of section 156(3) of the



Code of Criminal Procedure for registration a case and investigation of the same on which, Basnahi Police Station Case No. 2 of 2008 has been registered and investigation of the same has been started. After completion of investigation, police submitted final form vide Final Report No. 15 of 2008 dated 26.03.2008 as case was related to land dispute and the allegation of robbery not found true. After submission of final form complainant filed protest petition on 28.07.2008 which was treated as complaint petition as Complaint Case No. 750C of 2009.

3. Learned Judicial Magistrate, after perusal of the protest cum complaint petition and after examination of inquiry witnesses and other exhibits materials on record vide order dated 14.05.2020 took cognizance against the petitioners for the offences punishable under Sections 420, 427, 467, 468, 120(B)/34 of the IPC.

4. It is submitted by the learned counsel for the petitioners that out of land dispute, with harassing attitude, the petitioners were implicated with oblique and



ulterior motive. It is submitted that complainant himself purchased same piece of land from two different persons i.e., Siya Sharan Singh @ Ravi Singh and Bindeshwar Poddar. This fact is sufficient to gather the intention of complainant himself that how he purchased same piece of land from two different persons. It is submitted that the petitioners appears to purchase the land only from Siya Sharan Singh @ Ravi Singh and are genuine purchaser. It is submitted that the present complaint was filed with only motive to give criminal color to the civil dispute.

5. It is submitted by the learned counsels that the complaint which was earlier sent to the police station to lodge Complaint Case No. 23C of 2007 not appears to be supported by the affidavit. It is submitted that as the allegation is based upon land dispute which is civil in nature, the present criminal complaint is liable to be set aside/quashed. In support of his submission learned counsel also relied upon legal report of Hon'ble Supreme Court as passed in the matters of ***Usha Chakraborty and***



Another vs. State of West Bengal and Another
reported in ***2023 SCC OnLine SC 90*** and ***State of Haryana and Others vs. Bhajan Lal and Others***
reported in 1992 Supp (1) Supreme Court Cases 335.

6. Learned counsel appearing for O.P. No. 2 submitted that there is a case and counter case between the parties. It is submitted that the allegation of theft is available against petitioners.

7. It would be apposite to reproduce relevant Paragraph Nos. 6, 7, 8 and 10 of ***Usha Chakraborty (supra)***, which reads as:-

6. In *Paramjeet Batra v. State of Uttarakhand & Ors.*, 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 and Anr. v. State of Kerala and Ors., 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 and Ors. v. Sanjay Sharma and Ors., 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.*

10. *In Neeharika Infrastructure Pvt. Ltd. v. State of Maharashtra and Others, 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.”

8. It would be appropriate to reproduce the paragraph no. 102 of the Apex Court decision in the case of ***Bhajan Lal Case (supra)***, 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. In view of the aforesaid legal and factual submission as the calyx of complaint is civil dispute arises out of purchasing of a piece of land, where complaint himself appears disputing the purchase as he purchased same piece of land from two different person and moreover, nature of allegation against the petitioners are general and omnibus, therefore by taking guiding note of ***Usha Chakraborty case (Supra)*** and also by taking guiding note of guideline nos. 1, 5, 7 of ***Bhajan Lal case (supra)***, the impugned order of taking cognizance dated 14.05.2010 with all its consequential proceedings, *qua*, all above named petitioners, arising thereof as passed in connection with Complaint Case no. 750C of 2009 pending before the learned Judicial Magistrate, 1st Class, Saharsa, is hereby quashed and set aside.



10. Hence, this application stands allowed.
11. TCR (Trial Court Records), if any, be returned to learned trial court alongwith the copy of this judgment.

(Chandra Shekhar Jha, J)

Sudha/-

AFR/NAFR	NAFR
CAV DATE	NR
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