

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.30265 of 2016

Arising Out of PS. Case No.-829 Year-2013 Thana- EAST CHAMPARAN COMPLAINT
District- East Champaran

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Ram Chandra Rai Son of Late Jaipal Resident of Village- Kishunpur, Police
Station- Pipra Kothi , District-East Champaran.

... .. Petitioner/s

Versus

1. The State of Bihar.
2. Md. Ekwel Hasan son of Late Md. Abdul Karim R/o village - Jivdhara, P.S.
-Pipra Kothi, District- East Champaran.

... .. Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Madhurendra Kumar, Advocate

For the Opposite Party/s : Mr. Sanjay Kumar Singh, APP

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CORAM: HONOURABLE MR. JUSTICE CHANDRA SHEKHAR JHA
ORAL JUDGMENT

Date : 02-04-2024

1. At the outset, it is submitted that opposite
party no. 2, died during pendency of present application.

2. State is represented by learned APP.

3. The present application has been filed for
quashing the order dated 01.04.2016 passed by learned
8th Additional Chief Judicial Magistrate, Motihari, East
Champaran, in connection with T.R. No. 2597 of 2015
arising out of Protest cum Complaint Case No. C-829 of
2013, where cognizance was taken for the offences
under sections 417, 406 of the Indian Penal Code,



4. Prosecution case in brief is that initially Pipra Kothi P.S. case no. 08 of 2012 registered u/s 465, 468, 467, 420, 417, 406, 341, 379, 120 (B) IPC on 12.01.2012 on the basis of complaint case no. C-2943 of 2011 filed by the informant/O.P. no. 2 Md. Ekwai Hasan against the petitioner and one another namely Vinod Rai son of Ram Chandra Rai (petitioner no.1) alleging therein that the informant / O.P.no. 2 mortgaged his property bearing Khata no. 112/127 & 13, Plot no. 273 & 128 total area 0-8-5 dhurs to the petitioner and received Rs. 42,000/- The informant / O.P. no. 2 further alleged that later on he is ready to execute sale deed in favour of the petitioner on consideration of Rs. 1,50,000/- in which he has already received Rs. 42,000/- and the petitioner agreed to pay Rs. 1,08,000/- before execution of sale deed. The informant further alleged that on assurance of the petitioner, the informant executed sale deed on 10.07.2008 stating therein that he has already received



consideration amount in advance although he has not received the same. The informant always demanded his dues even after the registry but ultimately on 20.01.2011 the petitioner refused to pay the amount. The informant also alleged that the accused persons cut the Shisham tree planted on the said plot which belongs to him and moreover, the possession of the land has also not been transferred.

5. It is submitted by learned counsel appearing for the petitioner that upon investigation, the case was found false and, accordingly, charge sheet was submitted by exonerating the petitioner through charge sheet No. 47 of 2012 dated 29.02.2012 with recommendation to initiate a criminal proceeding against opposite party no. 2/informant, for the offences under Sections 182 and 211 of the Indian Penal Code (in short 'IPC'). It is submitted that opposite party no. 2 filed a Protest-cum-Complaint Petition, where the cognizance for the offences under Sections 417 and 406 of the



Indian Penal Code was taken against petitioner through impugned order.

6. The learned counsel further submitted that the dispute is purely civil in nature, which has given colour of criminal case. It is submitted that sale deed was executed after paying entire consideration amount as agreed between the parties, for which a proper endorsement of opposite party no. 2 was also obtained. It is submitted that it is a classical case of malicious prosecution on the basis of afterthought, and no *prima facie* case is made out against petitioner, even, upon bare perusal of complaint petition itself. Learned counsel further submitted that from the averments of the complaint, the maximum offence, which appears *prima facie*, true against petitioner is of theft, as regard to cutting Shisham tree but despite of allegation, no cognizance was taken for the offence under Section 379 of the Indian Penal Code against petitioner. It is submitted that there was no any entrustment and fact of



this case also not suggesting any cheating from very inception of the agreement, on behalf of the petitioner and in the background of aforesaid fact, continuing with present proceeding would only amount to abusing the process of law, and as such, impugned order is fit to be quashed and set aside.

7. In support of his submission, learned counsel relied upon the legal report of the Hon'ble Supreme Court as reported in the matter of ***Usha Chakraborty and Another vs. State of West Bengal and Another*** reported in ***2023 SCC OnLine SC 90***.

8. Learned APP while opposing the application fairly conceded that police submitted final form, exonerating petitioner after investigation, where cognizance took place upon Protest-cum-Complaint.

9. It would be apposite to re-produce relevant Paragraph Nos. 6, 7, 8, 9 and 10 of ***Usha Chakraborty case (supra)***, which reads as under:-

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.

9. In the decision in *State of Haryana v. Bhajan Lal*, 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 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.”

10. In view of aforesaid factual and legal submission, as *prima facie*, it can be gathered safely that dispute is civil in nature, where admittedly, consideration amount was accepted to be paid through sale deed but which was later on disputed orally as an afterthought making *prima facie*, no case against petitioner as alleged, and, as such, continuing with present proceeding *qua* petitioner would only amount to misusing the process of court of law, accordingly, the



impugned order of cognizance dated 01.04.2016 passed by learned 8th Additional Chief Judicial Magistrate, Motihari, East Champaran, is hereby set aside and quashed *qua* petitioner with all its consequential proceedings.

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
Uploading Date	03.04.2024
Transmission Date	03.04.2024

