

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**CRIMINAL MISCELLANEOUS No.51794 of 2015**

Arising Out of PS. Case No.-2293 Year-2014 Thana- KATIHAR COMPLAINT CASE  
District- Katihar

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1. Triveni Prasad Mandal S/o Prayag Mandal
  2. Ramakant Mandal S/o Triven Mandal
  3. Dev Kr. Sah S/o Ram Chandra Sah, Petitioner 1 and 2 are resident of Village- Pokharia P.S.- Dandkhora, Distt- Katihar, Petitioner no.3 is resident of Village Budha Chak, P.S.- Katihar Sahayak, Distt- Katihar.

... .. Petitioner/s

Versus

1. State of Bihar
2. Jitendra Yadav S/o Late Chandrika Yadav Resident of Mohalla- Barmasiya, P.S.- Katihar Distt- Katihar.

... .. Opposite Party/s

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**Appearance :**

For the Petitioner/s : Mr. Raghvendra Kumar Singh, Advocate  
For the Opposite Party/s : Mr. Anil Kumar Singh No. 1, APP

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**CORAM: HONOURABLE MR. JUSTICE CHANDRA SHEKHAR JHA**  
**ORAL JUDGMENT**

**Date : 06-05-2024**

Heard learned counsel for the petitioners  
and learned counsel for the respondents.

2. The present quashing petition has been preferred to quash the order dated 27.07.2015 passed in C.A. No. 2293 of 2014, where learned Judicial Magistrate, Ist Class Katihar took cognizance for the offences punishable under Sections 418, 323, 379/34 of the Indian Penal Code (in short IPC) against the



petitioners.

3. Opposite Party No. 2 fails to join the present proceedings.

4. From the crux of complaint petition it appears that one Jitendra Yadav filed a complaint case before learned Chief Judicial Magistrate, Katihar, alleging that Triveni Pd. Mandal made agreement for sale of a piece of land measuring 4 Acre 2 Kari of Mouja Pokharia, P.S.- Dandhora, Jamabandi No. 217, Thana No. 73, Khata No- 109, Khesra No- 98,47,46,102,103 and 17. It is further stated that Rs. 3 Lacs (Three lacs) price was fixed for land and Rs. 1.5 lacs was paid at the time of agreement and Rs. 1.5 lacs was to be paid at the time of execution of sale deed. When accused/petitioners demanded remaining Rs. 1.5 lacs, complainant alongwith his brother-in-law went to Triveni Mandal's house for payment of remaining amount. All accused persons were present over there, who after receiving payment of balance amount refused to execute sale deed in favour



of complainant. Accused persons also assaulted with fist and slap to O.P. No. 2, where accused Ramanand Mandal took chain from the neck of complainant which cost about Rs. 20,000/- and another accused Dev Kumar took Rs. 20,000/- from the pocket of his brother-in-law and they advanced threat.

5. Learned counsel appearing on behalf of petitioners submitted that present criminal case was lodged out of ulterior and oblique motive to give a criminal color to a civil dispute for which a title suit bearing no. 167 of 2010 is pending before the Court of learned Sub-judge 1, Katihar. It is pointed out that in 2013 itself, petitioner no. 1 lodged complaint case against O.P. No. 2, which was registered as Complaint Case No. 2103 of 2013, subsequent to that present complaint case was filed by O.P. No. 2, which was registered as Complaint Case No. 2293 of 2014. During the course of argument learned counsel for the petitioner drew attention to annexure 4, which is a judicial stamp



paper of Rs. 50/- dated 16.03.2013, where O.P. No. 2 accepted that he received total of Rs. 5,00,000/- and as now no more dues stands against petitioners. It is submitted that having all such backgrounds, where dispute appears settled, on false and imaginary grounds, present criminal complaint case was lodged with view to harass petitioners out of ulterior and oblique motive and therefore impugned order is fit to be quashed and set aside.

6. Learned APP appearing on behalf of State, opposes the application.

7. It would be apposite to reproduce the paragraph no(s). 6, 7, 8, 9 and 10 as reported in **Usha Chakraborty and Another Vs. State of West Bengal and Another** as reported in **(2023) SCC Online SC 90** which reads as under :-

**6.** In *Paramjeet Batra v. State of Uttarakhand*, 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*, 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, 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, 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."

8. It would also be apposite to reproduce the paragraph no. 102 of the Apex Court decision in the case of **State of Haryana and Others vs. Bhajan Lal and Others reported in 1992 Supp (1) Supreme Court Cases 335**, 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 aforesaid factual and legal discussions, it appears that there was civil dispute regarding a piece of land between the parties for which title suit bearing no. 167 of 2010 is pending before learned Sub-Judge 1, Katihar. It appears from receipt drawn on Rs. 50/- non-judicial stamp paper dated 16.03.2013 that O.P. No. 2 received Rs. 5,00,000/- from petitioners and now no more payment is due on them.

10. The case of petitioners appears covered under the legal ratio as settled through **Usha Chakraborty case (supra)** and also by guidelines as mentioned in para no. 1 & 7 of **Bhajan Lal Case (supra)**, accordingly impugned order of cognizance dated 27.07.2015 with all its consequential proceedings, *qua*, all above named petitioners arising thereof as



passed in C.A. No. 2293 of 2014, pending before learned Judicial Magistrate, Ist Class Katihar is hereby quashed and set aside.

11. The application stands allowed.

12. Let a copy of this judgment be sent to learned Trial Court, immediately.

**(Chandra Shekhar Jha, J.)**

S.Tripathi/-

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