

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.39620 of 2016

Arising Out of PS. Case No.-153 Year-2014 Thana- PIRO District- Bhojpur

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Laxman Singh Son of Late Ram Ashish Singh, Resident of Village-
Chapatahi, P.S.- Piro, District- Bhojpur.

... .. Petitioner/s

Versus

1. The State of Bihar
2. Deo Nath Singh, Son of Late Dasai Singh, Resident of village- Haswadih,
P.S.- Piro, District- Bhojpur.
3. Most. Kisha Mati Kuar, Wife of Late Dhanpat Singh
4. Munna Singh Son of Late Dhanpat Singh
5. Akhilesh Singh, Son of Late Dhanpat Singh 3,4 and 5 are resident of village-
Chapatahi, P.S.- Piro, District- Bhojpur.

... .. Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Brajesh Prasad Gupta, Advocate

For the Opposite Party/s : Mr. Nityanand, APP

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CORAM: HONOURABLE MR. JUSTICE CHANDRA SHEKHAR JHA
ORAL JUDGMENT

Date : 18-04-2024

1. This application preferred for quashing of
the order dated 31.03.2016 passed by Learned Sessions
Judge, Bhojpur, Ara in Cr. Revision No. 15 of 2016,
whereby and whereunder, the said revision application
has been allowed by learned Sessions Judge to set aside
the order of cognizance dated 28.10.2015/29.10.2015,
which was taken by the Learned A.C.J.M., Bhojpur at
Ara in connection with Piro P.S. Case No. 153 of 2014,



G.R. No. 2283 of 2014 (TR. No. 504 of 2015).

2. As per brief fact of prosecution case, it appears that Deo Nath Singh, Opposite Party No. 2, took Rs. 6000/- (Rupees Six Thousand) cash and prepared a paper to sale regarding Khata No. 768, Khesra No. 1911 measuring area 34 decimal in favour of the petitioner and also took Rs. 32,000/- (Rupees Thirty Two Thousand) cash on different dates for the purpose of his daughter's marriage and for different works. The total price of land was settled at Rs. 40,000/- but the opposite party no. 2 has been always extending date for registration of the said land and finally he did not register the suit land in the name of petitioner and on 29.01.2013 under a conspiracy with O.P. Nos. 3 to 5, got registered the suit land in the name of Opposite Party No. 3. It has been further alleged in his written report that step be taken to get the land registered in his name or opposite party no. 2 be asked to return his money with interest.



3. In aforesaid factual background of allegation, police after investigation submitted charge-sheet against petitioner vide Charge-sheet No. 196 of 2015 dated 23.07.2015 for the offences under Sections 406, 420/34 of Indian Penal Code (in short "IPC"), in Piro P.S. Case No. 153 of 2014, where learned Jurisdictional Magistrate after perusal of records and considering the materials available thereof, took cognizance against petitioner for the aforesaid offences of IPC.

4. Being aggrieved with order of cognizance dated 28.10.2015/29.10.2015, O.P. Nos. 2 to 5 approached the Court of Sessions Judge through Cr. Revision No. 15/2016, wherein by aforesaid order of cognizance was set aside. Hence, this petition.

5. Learned counsel appearing for the petitioner submitted that the impugned order i.e. order passed by Sessions Judge in Cr. Revision No. 15/2016 is bad in the eyes of law as police after investigation found



case true against O.P. Nos. 2 to 5 and accordingly, submitted charge-sheet. It is submitted that learned Magistrate going through materials available on record took cognizance finding case true *prima facie*. Learned counsel further submitted that at the stage of cognizance a *prima facie* material is required to be considered and not the material for prosecution and therefore, the impugned order as passed in aforesaid Cr. Revision is bad in eyes of law, particularly, when there is specific allegation of cheating is available against opposite parties. It is further submitted that merely nature of allegation related with civil dispute, it does not lead to a conclusion *ipso facto* that the criminal liabilities of opposite parties stand absolved.

6. In support of his submissions, learned counsel relied upon the legal report of Hon'ble Supreme Court in the matter of ***R. Kalyani vs. Janak C. Mehta and Others*** reported in ***(2009)1 SCC 516***.

7. Learned counsel appearing for the



opposite parties submitted that there is no agreement on record regarding alleged land deal and also except oral statement, nothing available regarding payment of Rs. 32,000/- and 6,000/- as alleged to be paid in advance for the execution of sale deed for agreed piece of land by O.P. No. 2. It is submitted that the court of revision rightly relied upon the report of ***Md. Ibrahim vs. State of Bihar and Others*** reported in ***(2009) 4 PLJR 99.***

It is further submitted that in absence of all such basic ingredients/material, it cannot be said that opposite parties were under intention to cheat petitioner from very inception of land deal. While concluding the argument, learned counsel also relied upon the legal report of ***Usha Chakraborty and Another vs. State of West Bengal and Another*** reported in ***2023 SCC OnLine SC 90*** and submitted that the present criminal prosecution was initiated only to give a criminal colour to dispute, which is otherwise purely civil in nature. Learned counsel further relied upon the report of the



Apex Court in the case of ***State of Haryana and Others vs. Bhajan Lal and Others*** reported in ***1992 Supp (1) Supreme Court Cases 335.***

8. It would be apposite to reproduce Sections 406 and 415 of IPC defining cheating for the sake of convenience and also for better understanding of fact, which are as under:

406. Punishment for criminal breach of trust.

—Whoever commits criminal breach of trust shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

415. Cheating.—*Whoever, by deceiving any person, fraudulently or dishonestly induces the person so deceived to deliver any property to any person, or to consent that any person shall retain any property, or intentionally induces the person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived, and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property, is said to "cheat".*

9. It would be further apposite to reproduce relevant Paragraph Nos. 6, 7, 8, and 10 of **Usha**



Chakraborty case (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."

10. It would also be appropriate to reproduce the paragraph no. 102 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 nay 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."

11. In view of aforesaid factual and legal discussions, it appears that in absence of any dishonest intention, *prima facie*, particularly in absence of any agreement in support of payment of Rs. 32,000/- and 6,000/- a *prime facie* case under Section 406 or 402 of IPC cannot be said made out. It appears from the materials as available on record that nature of dispute between the parties is purely civil in nature, where this prosecution was initiated as to give criminal colour to the dispute with a view to harass opposite parties having all ulterior and oblique motives. Accordingly, by taking a guiding note of ***Usha Chakarborty Case (supra)*** and also by taking notes of guidelines nos. 1, 5 & 7 of ***Bhajan Lal case (supra)***, it does not appear appropriate to interfere with impugned order.



12. Accordingly, the present quashing petition stands dismissed.

13. TCR (Trial Court Records), if any, be returned to learned trial court alongwith the copy of this judgment.

(Chandra Shekhar Jha, J)

Archana/-

AFR/NAFR	NAFR
CAV DATE	NA
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