

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.55792 of 2016

Arising Out of PS. Case No.-164 Year-2016 Thana- PIRBAHOR District- Patna

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1. Asadul Hamd @ Md. Asadul Hamd @ Md. Asdul @ Asdul and Ors son of Late Abdul Hamd @ Late Abdul Hamd,
 2. Md. Asif S/o Md. Aslam,
 3. Fariya Jabeen, W/o Ashfaque Ahmad @ Md. Ashfaque,
 4. Md. Amanuddin @ Md. Aman, S/o Late Moinuddin, All resident of Pirbahore Lane, P.S.- Pirbahore, District- Patna 800006.

... .. Petitioner/s

Versus

1. The State of Bihar
2. Serajuddin, S/o Late Abdul Sakur, R/o Lal bagh P.S. Pirbahore, P.O. Mahendru, Dist. Patna – Dead now.

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Ashok Kumar, Advocate.
For the State : Mr. Upendra Kumar, APP

CORAM: HONOURABLE MR. JUSTICE JITENDRA KUMAR
ORAL JUDGMENT

Date : 26-04-2024

The present petition has been filed by the Petitioners under Section 482 Cr.PC for quashing the impugned order dated 07.09.2016 passed in G.R. No. 3835 of 2016 in connection with Pirbahore P.S. Case No. 164 of 2016 by Shri Om Prakash, Chief Judicial Magistrate, Patna, whereby Ld. Magistrate has taken



cognizance of offence punishable under Sections 341, 323, 504 read with Section 34 of the Indian Penal Code on the Police Report bearing No. 201 of 2016 and directed issuance of summons against the Accused-Petitioners.

2. The aforesaid Pirbahore P.S. Case No. 164 of 2016 was lodged on 19.6.2016 for alleged offence punishable under Sections 341, 323, 504, 379 and 354 read with Section 34 of the Indian Penal Code and Section 3(i)(x) of the SC & ST Act. This First Information Report was lodged on written report of one Serajuddin who is now dead.

3. As per the written report, the informant is a resident of Lal Bagh, Pirbahore, Post Mahendru, Thana Pirbahore, Patna, and he is living in the house for 50-60 years. He has written the heading of the report as “in regard to life taking attack and land dispute” As per the allegation, at 12 O’ clock on 19.6.2016, when the informant was sitting in the courtyard, the accused persons (petitioners herein), who are living as tenants in the house, came along with some unknown persons and started abusing the informant and they were bent upon mishandling him. To protect himself, he called his family members. Then they started doing *Mar-Pit* with his family members and took away golden ring of his *Natni* and went



away, waiving pistol in their hands and extending threat. However, after investigation, Police did not find commission of cognizable offence and submitted Police Report only for non-cognizable offence punishable under Sections 341, 323, 504 read with Section 34 of the Indian Penal Code. Accordingly, Ld. Magistrate took cognizance of the offence punishable under Sections 341, 323, 504 read with Section 34 of the Indian Penal Code.

4. I heard Ld. counsel for the Petitioners and Ld. APP for the State.

5. Ld. counsel for the Petitioners submits that the impugned order is not sustainable in the eye of law for two reasons; firstly, Ld. Magistrate has not followed the procedure as prescribed for taking cognizance in a complaint case. He refers to Section 2(d) and Section 200 Cr.PC to submit that in case on hand the Police Report disclosing non cognizable offence should have been treated as complaint and I.O. should have been treated as Complainant and he should have been examined by Ld Magistrate before taking cognizance. But without examining the I.O, Ld Magistrate has taken cognizance of the offence. As such, the impugned order is not sustainable.

6. The next submission of Ld. counsel for the



Petitioners is that the whole Complaint is filed with *mala fide*. In fact, there is civil dispute between the Petitioners and the Informant in regard to the house in which they are living. The house in question is their (Petitioners') own property and they have leased out some portion of the house to the Informant. But the informant / tenant is claiming himself to be the owner of the house and on account of such dispute, an eviction suit has been filed by the Petitioners against the Informant and on account of this civil dispute , the present criminal case has been lodged by the Informant with malafide to put pressure on the Petitioners.

7. However, Ld. APP for the State defends the impugned order submitting that there is no illegality or infirmity in the impugned order. He further submits that as per the Police material collected during investigation, the offence under Sections 341, 323, 504 read with Section 34 of the Indian Penal Code is made out. He further submits that as per the facts and circumstances of the case, Ld. Magistrate is not mandatorily required to examine the I.O. before taking cognizance, because as per the First Proviso to Section 200 Cr.PC, official Complainant is not required to be examined. As such, there is no lapse on the part of Ld. Magistrate while taking cognizance.

8. I perused the materials available on record and



considered the submissions advanced by both the parties. However, before I proceed, it would be relevant to refer to the relevant statutory provisions and case laws to find the prevailing legal position on the in question.

9. Section-2(d) of Cr. P.C. which defines Complaint, reads as follows :

“ **Section-2(d)-** complaint” means any allegation made orally or in writing to a Magistrate, with a view to his taking action under this Code, that some person, whether known or unknown, has committed an offence, but does not include a police report.

Explanation- A report made by a police officer in a case which discloses, after investigation the omission of a non-cognizable offence shall be deemed to be a complaint; and the police officer by whom such report is made shall be deemed to be the complainant.”

10. Section 200 of Cr.P.C which provides for examination of complainant and witnesses in complaint case reads as follows :

“Sec. 200. - Examination of complaint – A Magistrate taking cognizance of an offence on complaint shall examine upon oath the complainant and the witnesses present, if any, and the substance of such examination shall be reduced to writing and shall be signed by the complainant and the witnesses, and also by the Magistrate :

Provided that, when the complaint is made in writing, the Magistrate need not examine the complainant and the witnesses -

(a) if a public servant acting or purporting to act in the discharge of his official duties or a Court has made the complaint; or

(b) if the Magistrate makes over the case for inquiry or trial to another Magistrate under section 192;

Provided further that if the Magistrate makes



over the case to another Magistrate under section 192 after examining the complainant and the witnesses, the latter Magistrate need not re-examine them.

(Emphasis supplied)

11. It would be profitable to refer to the identical case- **Chand and Ors Vs. State of U.P. and Anr. (2010 Cri. L.J. 2275)** decided by **Allahabad High Court**. In this case also, a petition was filed by the petitioner u/s 482 Cr.P.C. for quashing the chargesheet filed against the petitioner disclosing non-cognizable offence punishable u/s 323,504 and 506 of I.P.C. On the basis of the said chargesheet, Ld. Magistrate had taken cognizance and summoned the petitioner for the aforesaid offences. It was argued that Ld. Magistrate was required to proceed treating the chargesheet as a Complaint Case and not as a State Case. But Ld. Magistrate erroneously took cognizance and passed the summoning order without recording the statement of the Investigating Officer u/s 200 Cr.P.C. However, High Court did not agree with the argument of Ld. counsel for the petitioner and held that the argument of the Ld. counsel for the petitioner was misplaced in view of proviso to Section 200 of Cr.P.C. which lays down that whenever a complaint is made by writing by a public servant, the Magistrate need not examine the complainant or the witnesses. The relevant paragraphs of the



case are as follows:

“ 9. In view of the said explanation report of the police officer after investigation disclosing commission of non-cognizable offence has to be deemed to be a complaint and the police officer who submitted the report has to be deemed to be a complainant. In other words the charge sheet submitted by the police in a non-cognizable offence shall be treated to be a complaint and the procedure prescribed for hearing of complaint case shall be applicable to that case.

10. In the present case the charge sheet submitted by the investigating officer shall be treated as a complaint and the cognizance taken by the Magistrate shall be deemed to have been taken on a complaint.

11. Learned counsel for the applicant tried to argue that since the charge sheet has to be treated as a complaint, the Magistrate could not have taken cognizance of the offences until unless the Magistrate recorded the statement of the investigating officer under Section 200 Cr. P.C.

12. I considered over this argument and I feel that the same is misplaced. Proviso to Section 200 of the criminal procedure lays down that whenever a complaint is made in writing by a public servant, the Magistrate need not examine the complainant or the witnesses.

13. In the present case also the complaint has been filed by a public servant hence the Magistrate was not obliged to record the statement under Sections 200 or 202 Cr. P.C.”

12. Similar view has been also taken by Calcutta High Court in Biswanath Saraf Vs. The State (1978 Cr. L. J. 318)

holding as follows:

“4. The explanation to Section 2(d) provides that a report made by a police officer in a case which discloses, after investigation, the commission of non-cognizable offence, shall be deemed to be a complaint and the police officer by whom the report is made shall be deemed to be the complainant. Therefore, under S. 190(1) (a) the learned Magistrate could take cognizance on the basis of a complaint as the challan in the present case would be and the police officer being a public servant he need not be examined under Section 200 of the Criminal



P.C. by virtue of S. 200(a). Accordingly, I hold that the learned Magistrate was perfectly Tight in taking cognizance of the case on the basis of the challan which is not vitiated by any legal flaw.”

(Emphasis supplied)

13. Karnatka High Court in C.P. Yogeshware Vs. Registrar, Karnataka Lokayukta (2007 Cri L J 3806) has also held that in view of Proviso to Section 200 Cr. P.C. read along with Section-190 Cr.P.C. it is clear that where a complaint is made in writing by a public servant acting or purporting to act in discharge of official duties, the Magistrate need not examine the complainant and the witnesses, observing as follows:

“7. It is not in dispute that the complaint was lodged by the Registrar of the Lokayukta. Reading together Section 200, proviso (a), along with Section 190(1), it becomes clear that where the complaint is made in writing and if the said complaint is by a public servant acting or purporting to act in the discharge of official duties, the Magistrate need not examine the complainant and the witnesses. Therefore, the above provision answers the first ground urged by the learned Counsel for the petitioner and therefore non-recording of the sworn statement of the complainant is not an infirmity in the instant case.”

14. In Associated Cement Co. Ltd. Vs. Keshvanand, (1998) 1 SCC 687, Hon’ble Supreme Court has also expressed similar view, holding as follows:

“22.Such examination of the complainant on oath can be dispensed with only under two situations, one if the complaint was filed by a public servant, acting or purporting to act in the discharge of his official duties and the other when a court has made the complaint. Except under the above understandable situations the complainant has to make his physical presence for being examined by



the magistrate. Section 256 or Section 249 of the new Code clothes the magistrate with jurisdiction to dismiss the complaint when the complainant is absent, which means his physical absence.”

(Emphasis supplied)

15. In National Small Industries Corpn. Ltd. Vs. State (NCT of Delhi), (2009) 1 SCC 407, also Hon’ble Supreme Court has expressed similar view, holding as follows:

“20. Thus, the answer to the question raised is : where an incorporeal body is the payee and the employee who represents such incorporeal body in the complaint is a public servant, he being the de facto complainant, clause (a) of the proviso to Section 200 of the Code will be attracted and consequently, the Magistrate need not examine the complainant and the witnesses.”

16. As such I find that in view of the statutory provisions and case laws there is no dispute that any chargesheet submitted by police officer disclosing non-cognizable offence is deemed to be a complaint in view of section- 2 (d) of Cr.P.C. and the police officer is deemed to be the complainant. As such, a Magisterial Court, in case of submission of such chargesheet, is required to follow the procedure of a complaint case. However, it is also clear from the proviso to Section 200 Cr.P.C. that procedure in regard to complaint filed by public servant in discharge of official duties is somewhat different to that of a complaint filed by a private person. As per the proviso to section 200 Cr.P.C., the Magistrate is not mandatorily required to examine official complainant and the witnesses before taking



cognizance.

17. As such, I do not find merit or substance in the first submission of Ld. counsel for the Petitioners.

18. Coming to the second submission of Ld. Counsel for the Petitioners, I find that there is dispute regarding title to the house where the Informant and the Accused-Petitioners are living. Both are claiming title to the property and claiming other side as tenants and there is already a civil dispute going on between them in Civil Court. As such, the complaint seems to have been filed *mala fide*. Moreover, even a *prima facie* case for offence punishable under Sections 323 and 504 of the Indian Penal Code is not made out as per the material available on record.

19. Hence, the impugned order is liable to be quashed on the grounds nos. 3 and 7 as stated by **Hon'ble Supreme Court** in para 102 of **State of Haryana Vs. Bhajan Lal (1992) Suppl (1) SCC 335**. The relevant para of the **Bhajan Lal case (Supra)** reads as follows:

“**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 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.

103. We also give a note of caution to the effect that the power of quashing a criminal proceeding should be exercised very sparingly and with circumspection and that too in the rarest of rare cases; that the court will not be justified in embarking upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR or the complaint and that the extraordinary or inherent powers do not confer an arbitrary jurisdiction on the court to act according to its whim or caprice.”

(Emphasis supplied)

20. Accordingly, the present petition is allowed quashing and setting aside the impugned order dated 7.9.2016 passed by Ld. Chief Judicial Magistrate, Patna, in Pirbahore P.S. Case No. 164 of 2016 bearing corresponding G.R. No. 3835 of 2016.

(Jitendra Kumar, J.)

S.Ali/Ravishank
ar/Chandan-

AFR/NAFR	AFR
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