

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.29472 of 2023

Arising Out of PS. Case No.-353 year-2018 Thana- GANDHIMAIDAN district- Patna

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1. Kamlesh Kumar Singh, son of late Bhagwan Singh, resident of Ganga-5, Flat No.301, Jalalpur City, Ramjaypal Path, Bailey Road, Danapur, Patna, Pin - 801503, Bihar
 2. Upendra Kumar Sinha, son of late Devendra Kumar Sinha resident of Sarswati - 2, Flat No.204, Jalalpur City, Ramjaypal Path, Baily Road, Danapur, Patna, Pin - 801503, Bihar

... .. Petitioners

Versus

1. The State of Bihar
2. Avinash Kumar, son of Sri Rajeshwar Singh, resident of S.K. 70, Housing Colony, Near Madhuwan Apartment, Hanuman Nagar, Malahi Pakri, P.S. - Patrakar Nagar, Distt. - Patna, Pin-800020.

... .. Opposite Parties

Appearance :

For the Petitioner	:	Mr. Mrigank Mouli, Sr. Advocate Mr. Girijish Kumar, Advocate
For the State	:	Mr. Ram Naresh Ray, APP
For the Opp. Party No.2	:	Mr. Vikas Kumar, Advocate Mr. Sanjiv Kumar, Advocate

CORAM: HONOURABLE MR. JUSTICE SANDEEP KUMAR
ORAL JUDGMENT
Date : 20-12-2024

Heard learned counsel for the petitioners, learned
APP for the State and learned counsel for the opposite party
no.2.

2. In this case, the petitioners have challenged
the order dated 27.08.2021 passed by the learned Additional
District Judge, IX, Patna, in Criminal Revision No.470 of 2019,
whereby the learned Additional District Judge has set aside the



order dated 12.07.2019 passed by the learned A.C.J.M.-XVII, Patna, by which the learned Magistrate has accepted the final form submitted by the Police. The petitioners have also prayed for staying the further proceeding proceedings in connection with Criminal Revision No.470 of 2019.

3. As per the F.I.R. the informant is the promoter-cum-director of Sea Vihar Fun Fair Private Limited, Patna (for short “the company”), which is registered with the Registrar of Companies since 21.09.2016. On 03.03.2017, the wife of the informant namely, Neelam Kumari, was also inducted as the Director of the aforesaid company and again on 23.03.2017, two more Directors namely, Kamlesh Kumar Singh and Upendra Kumar Sinha (petitioners) were also inducted as Directors of the said company. It has been alleged that both the petitioners have forged the signature of his wife i.e. Neelam Kumari on the bank loan papers and when this fact came to the knowledge of the informant, he along with his wife requested the Bank Manager not to allow any withdrawal from the account of the company but, despite the said request, the petitioners have colluded with the then Bank Manager of the Bank and withdrew Rs.5.5 crores fraudulently from the bank account of the company. It has also been alleged that later on, the informant



came to know that the petitioners have connived and conspired with the Registrar of the Companies and removed the informant and his wife from the directorship of the company. It has further been alleged that on 09.08.2018 when the informant met the petitioners in the office of the petitioner no.1, he was threatened with a pistol and thereafter the informant was assaulted by the petitioners. During the assault, the petitioners also snatched the golden chain and golden ring from the informant. Accordingly, the present F.I.R. has been lodged.

4. After lodging of the present F.I.R., the Police investigated the case and found no substance in the allegation of the informant and thereafter, final form was submitted by the Police on 15.01.2019. The learned Magistrate vide order dated 12.07.2019 accepted the final form submitted by the police. Against the order of the Magistrate, the informant preferred Criminal Revision No.470 of 2019 before the learned A.D.J.-IX, Patna. The learned Additional District Judge vide impugned order dated 27.08.2021 set aside the order of the learned Magistrate and directed the learned Magistrate to pass a fresh order after giving due opportunity of hearing to the informant and also to pass an order for further investigation on any point including the point of forging the signature of the informant's



wife if it be considered necessary in the interest of justice and for just decision of the case.

5. In this case, an Interlocutory Application No.1 of 2023 has been filed by the petitioners challenging the subsequent orders passed by the learned Magistrate after the impugned order dated 27.08.2021.

6. Learned Senior Counsel for the petitioners submits that for smooth functioning of the Water Park, money was required and therefore, the company approached the State Bank of India for a term loan. Accordingly, State Bank of India, Judges Court Road, Antaghat, Patna sanctioned a term loan of Rs.9.25 crores on 29.01.2018. Thereafter, a meeting of the Board of Directors of the company was held on 05.02.2018 and the extract from the proceedings of the meeting of the Board of Directors was prepared, in which the petitioner no.1 was authorized to operate the credit facilities and the accounts in the name of the company maintained with the State Bank of India. The proceeding of the meeting was signed by the informant and his wife, who were one of the Directors of the company. Thereafter on 01.06.2018 the meeting of the Board of Directors of the Company was convened, in which it was decided to change the authorized signatory by superseding the earlier



resolution dated 05.02.2018, which reads as under:-

“RESOLVED THAT Mr. AVINASH KUMAR, Mr. UPENDRA KUMAR SINHA and Mr. KAMLESH KUMAR SINGH be and are hereby authorized to sign/operate credit facilities opened with State Bank of India and it will be till disbursement of loan on behalf of SEA VIHAR FUNFAIR PRIVATE LIMITED in place of existing authorized signatories Mr. KAMLESH KUMAR SINGH. The above acts done and documents shall be binding on the company, until the same is withdrawn by giving written notice thereof.”

7. Learned Senior Counsel for the petitioners also submits that in the first meeting of the Board of Directors which was held on 05.02.2018, the petitioner no.1 was authorized as a signatory and subsequently in the meeting dated 01.06.2018, which was held after four months, it was decided to change the signatories. The wife of the informant had also participated in both the meetings but, at that time, there was no whisper of allegation against the petitioners that the forged signature of the wife of the informant was obtained in the proceeding dated 05.02.2018 rather, it has been categorically mentioned in the proceeding of the meeting dated 01.06.2018 that it supersedes exiting resolution dated 05.02.2018. Moreover, there is no allegation in the proceeding dated



05.02.2018 that the petitioners have illegally withdrawn money from the State Bank of India against said sanctioned loan or that the State Bank of India disbursed the money in the account of the petitioners.

8. It has been submitted by learned Senior Counsel for the petitioners that the proceeding dated 05.02.2018 forwarded to the State Bank of India, Judges Court Road, Antaghat, Patna and thereafter, as per the resolution passed by the Board of Directors of the Company, the amounts were disbursed by the State Bank of India on the request of the authorized signatory i.e. the petitioner no.1 from time to time in favour of different vendors, who provided materials and rendered service for the water park. Moreover, despite resolution dated 05.02.2018 of the Board of Directors of the company, by which only the petitioner no.1 was authorized as a signatory, the informant i.e. opposite party no.2 also signed along with petitioner no.1 on some of the request letters which were given to the State Bank of India.

9. It has further been submitted that from the request letter dated 26.03.2018, it appears that the informant also signed on the request letter in teeth of the resolution dated 05.02.2018 passed by the Board of Directors of the company.



Thereafter, all the four Directors of the company i.e. Avinash Kumar (informant), Smt. Neelam (wife of informant) and petitioners visited the office of the State Bank of India, Judges Court Road, Antaghat, Patna and signed the Letter of Arrangement on 15.03.2018 in presence of the officials of the State Bank of India and the officials of the Bank also endorsed the signature of all the four Directors of the Company.

10. It is the submission of learned Senior Counsel for the petitioners that as per the proceeding of the meeting dated 01.06.2018, all the requests regarding disbursement of the amount sent by the company to the State Bank of India shall be made only under the signature of the three signatories i.e. the petitioners and the informant, which is apparent from the request letters dated 06.06.2018 and 18.06.2018, which have been issued after the resolution dated 01.06.2018.

11. The next submission of learned Senior Counsel for the petitioners is that the informant i.e. Opposite party no.2 sent a letter dated 02.07.2018 to the Manager (Advance) State Bank of India, Judge Court Road Branch, Anta Ghat, Patna, requesting to stop the disbursement of sanctioned loan from the account of the company because of a dispute



having cropped up among the directors of the company and in pursuance of the said letter, the State Bank of India sent a letter dated 24.09.2018 to all the Directors of the company, in which it was categorically mentioned that no disbursement has been made after 18.06.2018 because of the letter of the informant received by the State Bank of India for stopping the disbursement.

12. It has been argued by learned Senior Counsel for the petitioners that the last disbursement was made on 18.06.2018 on the request made by all the three Directors including the informant, which is supported by the bank account statement of the company but, the informant filed the present F.I.R. making allegations against the petitioners that they had forged the signature of the wife of the informant in the bank loan documents.

13. It has also been submitted that the Chief Manager, State Bank of India, SME (small and medium enterprises), Kankarbagh, Patna, vide letter dated 07.08.2021 informed the Directors of the company that the informant and his wife (One of the Directors of the company) had written letters dated 21.06.2021 to the Chief Manager, State Bank of India, SME (small and medium enterprises), Kankarbagh, Patna



requesting therein to release the personal guarantee extended by them in captioned unit. In the said letter, they undertook to withdraw all the charges/allegations made by them against bank officials and they also clarified that Bank has always acted in an unbiased manner. Therefore, on perusal of the aforesaid letter dated 21.06.2021, it appears that the allegations leveled in the F.I.R. against the bank officials and the petitioners regarding their connivance are misconceived and frivolous allegations.

14. The next argument of learned Senior Counsel for the petitioners is that the informant has lodged the present F.I.R. alleging that the signature of his wife, who is one of the Directors of the company, is forged in the proceeding dated 05.02.2018 but his wife who is aggrieved party never lodged such complaint before the Police Officials. The informant, who is one of the signatories to the proceeding dated 05.02.2018 along with the petitioners, had not raised any doubt or any allegation regarding his signature, but raised question on the signature of his wife. Moreover, the informant, who had approved the proceeding dated 05.02.2018 and later on, during the subsequent meeting dated 01.06.2018 had considered the earlier proceeding dated 05.02.2018 in totality but, at that time, the informant did not raise any allegation regarding such forged



signature of his wife but had raised the question of veracity of his wife's signature after about six months. During this intervening period, there was no allegation either by the informant or his wife regarding forged signature. Therefore, it appears that the present F.I.R. has been lodged by the informant deliberately as an after thought.

15. It has also been argued that so far as the allegation of the informant that the petitioners in connivance with the Registrar of the Company had removed the informant and his wife from the directorship of the company is concerned, the same is factually incorrect as the informant and his wife were the Directors of the Company on the date when the said F.I.R. was lodged against the petitioners. It is a fact that on 31.07.2018 the company filed DIR-12 before the Registrar of the Company, Bihar for removal of the informant and his wife from the directorship of the company, which was acknowledged by the Registrar of the Company, Bihar through e-mail dated 01.08.2018 and finally the Registrar of the Company approved DIR-12 confirmation and in this regard the company had received an e-mail dated 15.07.2019, meaning thereby, the informant and his wife were Directors prior to 15.07.2019. Therefore, the allegations of the informant that he and his wife



(both directors) were removed on the date of the filing of the F.I.R. was incorrect, misconceived and far from the fact.

16. It has further been argued that the informant alleged in the said F.I.R. that petitioners abused him in the office of petitioner no.1 and that the petitioner no.1 attacked on the informant with a pistol with an intention to kill him but, the said accusation is factually incorrect because on 09.08.2018 the petitioner no.1 was not in Patna rather, he was present in Rajya Sabha premises, which is apparent from the pass issued on 09.08.2018 in favour of petitioner no.1 at 1.04 P.M. by the Rajya Sabha Secretariat.

17. The submission of learned Senior Counsel for the petitioners is that the learned Magistrate issued summon on 16.01.2019 to the informant on the address given in the *fardbeyan* and also on the address mentioned on the first page of the F.I.R. and the report of the office was placed before the Court on 11.02.2019, in which it was mentioned that the father of the informant refused to accept the summon. Thereafter, again the case was take up on 18.02.2019 for appearance of the informant but, he did not appear. Therefore, again a fresh notice was issued by the Court on 03.06.2019 and the report was submitted by the office before the Court on 25.06.2019, in



which it was mentioned that the notices have been served. Since the informant chose not to appear before the Court, the Court came to the finding that the informant has nothing to say on the final form submitted by the police and accordingly, accepted the final form. However, the said order was challenged before the learned Additional District Judge. Thereafter, the impugned order dated 27.08.2021 was passed.

18. It is the submission of learned Senior Counsel for the petitioners that the impugned order dated 27.08.2021 is bad in law as well as in fact as the learned Additional District Judge has not appreciated the materials available on record while passing the impugned order. The learned Additional District Judge has also not considered the fact that the informant himself signed on the proceeding dated 05.02.2018 along with his wife, who is also one of the Directors of the company.

19. Learned Senior Counsel for the petitioner points out that the learned Additional District Judge while passing the impugned order ought to have considered the fact that the petitioner no.1 was not present in Patna on 09.08.2018 when the alleged act was committed by the petitioners. The learned Additional District Judge has failed to consider that the



notices sent by the learned Magistrate and summon issued to the informant on the address given in the *fardbeyan* and also address mentioned on the first page of the F.I.R. which were validly served to the informant but the informant had chosen not to appear before the Court and therefore, the learned Magistrate had given full opportunity to the informant to place his case before the Court.

20. The last submission of learned Senior Counsel for the petitioners is that the learned Additional District Judge has exceeded his jurisdiction in directing for further investigation and specifically about the forged signature of Neelam Kumari, meaning thereby, the learned Additional District Judge has directed to investigate the matter in a specific manner, which is impermissible in law. Therefore, the impugned order dated 27.08.2021 is illegal and in violation of settled law.

21. Learned Senior Counsel for the petitioners has relied upon the decision of the Hon'ble Supreme Court rendered in the case of *M.C. Abraham & Anr. vs. State of Maharashtra & Ors.* reported as **2003 (2) SCC 649** wherein it has been held that it is the statutory obligation and duty of the police to investigate into the crime and the Courts normally ought not to interfere and guide the investigating agency as to in



what manner the investigation has to proceed.

22. He also relied upon the decision of the that Hon'ble Supreme Court in the case of **D. Venkatasubramaniamachar Vs M.K.Mohan Krishnamachari and Another**, reported in **2009 (10) SCC 488**, wherein it has been held as under :-

"In our view the High Court exceeded its jurisdiction in making this direction which deserves to be set aside. While it is open to the High Court, in appropriate cases, to give directions for prompt investigation etc. the High Court cannot direct the investigating agency to submit a report that is in accord with its views as that would amount to unwarranted interference with the investigation of the case by inhibiting the exercise of statutory power by the investigating agency."

23. Learned Senior Counsel for the petitioners has also relied upon the decision rendered in the case of **Indian Oil Corporation Vs. NEPC India Ltd. & Others (2006) 6 SCC 736**, wherein it has been held as under :-

"While on this issue, it is necessary to take notice of a growing tendency in business circles to convert purely civil disputes into criminal cases. This is obviously on account of a prevalent impression that civil law remedies are time consuming and do not adequately protect



the interests of lenders/creditors. Such a tendency is seen in several family disputes also, leading to irretrievable break down of marriages/families. There is also an impression that if a person could somehow be entangled in a criminal prosecution, there is a likelihood of imminent settlement. Any effort to settle civil disputes and claims, which do not involve any criminal offence, by applying pressure through criminal prosecution should be deprecated and discouraged..."

24. Learned Senior Counsel for the petitioners has also relied upon the decision of the Hon'ble Supreme Court rendered in the case of ***State of Haryana and Others vs. Bhajan Lal and Others*** reported as ***1992 Suppl. (1) SCC 335*** wherein the Hon'ble Supreme Court has laid down the guidelines under which an F.I.R./complaint can be quashed and the present case is squarely covered under the said guidelines as even if the entire allegations made in the F.I.R. is taken to be true, still no offence under Sections 406,409,198,504 and 120B of Indian Penal Code is made out against the petitioners. Further, it is settled principle of criminal jurisprudence that if the contents of the FIR do not disclose the commission of any offence, the machinery of law and process of the Court should not be allowed to be abused. Neither the investigating agency nor the criminal courts are the forums for wrecking vengeance of one



against the others.

25. By making the aforesaid submissions, learned Senior Counsel for the petitioners submits that from the above facts, it is stated that the present F.I.R. is based on incorrect facts and it is a deliberate attempt on the part of the informant to harass the petitioners by involving them in frivolous litigation, which is nothing but an abuse of the process of the law. The present criminal proceeding is initiated with an ulterior motive and continuation of the same amounts to an abuse of the process of the law. Therefore, the impugned order dated 27.08.2021 passed by the learned Additional District Judge is bad in law and is liable to be set aside.

26. Learned counsel for the informant (opposite party no.2) has submitted that the police has submitted the final form without investigating the main allegation regarding the withdrawal of huge amount of money in connivance with the Bank officials by forging the signature of informant's wife and removing the informant and his wife from the directorship of the company in connivance with the Registrar of the Company.

27. Learned counsel for the opposite party no.2 has also submitted that the learned Additional District Judge has rightly taken note of the fact that the informant at the very



beginning of the complaint dated 09.08.2018, which is the basis of institution of the present F.I.R., has given his present address as S.K. 70, Housing Colony, Near Madhuwan Apartment, Hanuman Nagar, Malahi Pakri, P.S.-Patrakar Nagar, District-Patna but, instead of sending the notices at his present address, the notices were sent at the permanent address of the informant at village- Chainpur, P.S.- Gopalpur, District- Patna, where the informant does not reside and on account of this, the notices could not have been served upon the informant. It is emphasised by learned counsel for the opposite party no.2 that the present address of the informant was clearly mentioned in the aforesaid complaint dated 09.08.2018. Therefore, it can be said that both the notices issued by the Court were not duly served upon the informant and on account of which, he did not have any opportunity to present his case before the learned Magistrate at the time of hearing of acceptance of final form.

28. It has been submitted by learned counsel for the opposite party no.2 that in course of argument it has been contended on behalf of the petitioners that the revision application has been filed under Section 397 of Code of Criminal Procedure and therefore, the learned Additional District Judge should have either allowed or dismissed the



Criminal Revision without issuance of any direction regarding investigation of this case, but the learned Additional District Judge has issued direction to investigate the case in a particular manner, which is impermissible. In this regard, learned counsel for the opposite party no.2 has drawn the attention of this Court to the operative part of the impugned order, which reads as under:-

*“Hence, considering all the facts and circumstances of the case and above made discussions, it is clear that the learned A.C.J.M.-XVII has committed an illegality in passing the impugned order dated 12.07.2019. Hence, the order dated 12.07.2019 is set aside and the learned A.C.J.M. is directed to pass a fresh order after giving due opportunity of hearing to the informant, and also to pass an order for further investigation on any point including the point of forging of the signature of informant's wife **if it be considered necessary in the interest of justice and for just decision of the case.** Let the copy of this order be sent to the learned court below along with the L.C.R.” (emphasis supplied)*

29. It has been submitted that from a plain reading of the operative part of the impugned order, it is clear that the learned Additional District Judge has left open to the discretion of the learned Magistrate to pass an order for further



investigation on any point including scientific investigation of alleged forging of the signature of the wife of the informant. Therefore, the same can not be treated as a direction to investigate the case in a particular manner.

30. The learned counsel for the opposite party no.2 has further submitted that there is ample power to the Revisional Court under Code of Criminal Procedure to issue positive direction for inquiry. Section 397 of the Code of Criminal Procedure should not be read in isolation but it should always be read with the provisions of Sections 398 to 401 of the Code of Criminal Procedure wherein the power to inquire and power of Sessions Judge under revision have been dealt with in detail. Sections 398 to 401 of Code of Criminal Procedure, read as under :-

“398. Power to order inquiry :- On examining any record under section 397 or otherwise, the High Court or the Sessions Judge may direct the Chief Judicial Magistrate by himself or by any of the Magistrates subordinate to him to make, and the Chief Judicial Magistrate may himself make or direct any subordinate Magistrate to make, further inquiry into any complaint which has been dismissed under section 203 of Sub-Section (4) of section 204 or into the case of any person accused of an offence who has been discharged:



Provided that no Court shall make any direction under this section for inquiry into the case of any person who has been discharged unless such person has had an opportunity of showing cause why such direction should not be made.

399. Sessions Judge's powers of revision :- (1)

In the case of any proceeding the record of which has been called for by himself the Sessions Judge may exercise all or any of the powers which may be exercised by the High Court under Sub-Section (1) of section 401.

(2) Where any proceeding by way of revision is commenced before a Sessions Judge under Sub-Section (1), the provisions of Sub-Sections (2), (3), (4) and (5) of section 401 shall, so far as may be, apply to such proceeding and references in the said subsections to the High Court shall be construed as references to the Sessions Judge.

(3) Where any application for revision is made by or on behalf of any person before the Sessions Judge, the decision of the Sessions Judge thereon in relation to such person shall be final and no further proceeding by way of revision at the instance of such person shall be entertained by the High Court or any other Court.

400. Power of Additional Sessions Judge :- *An Additional Sessions Judge shall have and may exercise all the powers of a Sessions Judge under this Chapter in respect of any case which*



may be transferred to him by or under any general or special order of the Sessions Judge.

401. High Court's powers of revision :- *(1) In the case of any proceeding the record of which has been called for by itself or which otherwise comes to its knowledge, the High Court may, in its discretion, exercise any of the powers conferred on a Court of Appeal by sections 386, 389, 390 and 391 or on a Court of Session by section 307 and, when the Judges composing the Court of revision are equally divided in opinion, the case shall be disposed of in the manner provided by section 392.*

(2) No order under this section shall be made to the prejudice of the accused or other person unless he has had an opportunity of being heard either personally or by pleader in his own defence.

(3) Nothing in this section shall be deemed to authorize a High Court to convert a finding of acquittal into one of conviction.

(4) Where under this Code an appeal lies and no appeal is brought, no proceeding by way of revision shall be entertained at the instance of the party who could have appealed.

(5) Where under this Code an appeal lies but an application for revision has been made to the High Court by any person and the High Court is satisfied that such application was made under the erroneous belief that no appeal lies thereto and that it is necessary in the interests of justice



so to do, the High Court may treat the application for revision as a petition of appeal and deal with the same accordingly.”

31. It is the submission of learned counsel for the opposite party no.2 that under the revisionary jurisdiction, the Additional Sessions Judge has same power which the High Court possesses under section 401 of the Cr.P.C. Therefore, from the reading of the aforesaid provisions, it is clear that the Revisional Court either High Court or Court of Session including the Additional Session Judge while hearing the revision application is well within his power to pass any consequential or incidental order that may be just or proper. Not only that, it may also take additional evidence, if necessary, by itself or direct it to be taken by the Magistrate. There is no embargo on the power of the Additional Sessions Judge to give any direction to the Magistrate while deciding any criminal revision application and therefore, there is no infirmity in the impugned order dated 27.08.2021 passed by the learned Additional District Judge.

32. The learned counsel for the opposite party no.2 has further argued that the contention of the petitioners that the dispute is civil in nature as there is a fight between the parties regarding the ownership of the company and the matter



is pending before the appropriate forum, in this regard, it is submitted that the the petitioners are attempting to convert their criminal offence into the civil case and therefore, evaded the criminal liability, so the stand of the petitioners that dispute is civil in nature has no legs to stand.

33. In support of this submission, he has placed reliance on a decision of the Hon'ble Supreme Court in the case ***Amit Kapoor vs. Ramesh Chander*** reported in ***(2012) 9 SCC 460*** wherein in para 27.1 it has been held as under :-

“27.1. Though there are no limits of the powers of the Court under Section 482 of the Code but more the power, the more due care and caution is to be exercised in invoking these powers. The power of quashing criminal proceedings, particularly, the charge framed in terms of Section 228 of the Code should be exercised very sparingly and with circumspection and rarest of rare cases.” that too in the rarest of rare cases.”

34. It has also been argued that the present case is at nascent stage as the matter is pending for investigation and if the impugned order of the leaned Additional District Judge is set aside that would tantamount to nipping the entire matter in bud. The opposite party no.2 has submitted that the police officials are in collusion with these petitioners, which will be



evident from the order dated 03.12.2021 passed by learned Magistrate, by which the Investigating Officer was directed to submit his report after conducting further investigation within four weeks and the copy of the said order was also sent to the concerned S.H.O. but to no avail. On 04.01.2022 a strong reminder was also sent by the learned Magistrate to the concerned Investigating Officer to submit his report in light of order dated 03.12.2021. Even after lapse of almost seven months nothing was done by the concerned Investigating Officer and the S.H.O. On 22.08.2022, the matter was transferred to the Court of learned S.D.J.M., Patna and on 26.10.2022, a show cause notice was issued by the learned S.D.J.M. to the Investigating Officer and the S.H.O. of the concerned Police Station, but even thereafter, nothing was done neither any reply to the show cause was filed nor any investigation report was submitted. On 05.09.2022 the learned S.D.J.M., Patna issued direction for physical appearance of the concerned Police Officers on 14.09.2022, but neither the Investigating Officer of the case nor the S.H.O. concerned were present nor they sent any report. Hence, on 23.09.2022 a last chance was given to the Investigating Officer and the S.H.O. concerned to comply the order dated 03.12.2021 and explain the delay caused by them in



compliance of the order, failing which, the Court would be bound to recommend to take necessary action against them. Therefore, the aforesaid facts speaks volumes regarding the casual approach of the Police who are in connivance with the petitioners and other accused persons.

35. It is submitted by learned counsel for the opposite party no.2 that this Court vide order dated 01.05.2023 stayed the further proceeding of the case pending in the court below and therefore, the opposite party no.2 has filed Interlocutory Application No.2 of 2024 for vacating interim order dated 01.05.2023 passed by this Court.

36. Lastly, it has been submitted by learned counsel for the opposite party no.2 that not only the petitioners are involved in this case but also, the the bank officials have colluded with the petitioners as without their collusion such offence could not have been committed. In view of the aforesaid facts, there is no merit in the present case filed under Section 482 of Cr.P.C. as there is no infirmity in the impugned order.

37. I have considered the submissions of the parties and perused the materials on record including the impugned order.

38. In the present case, it is an admitted fact that



after the submission of the final form, the notices were sent at the village (permanent) address of the informant and not at the present and current address of the informant, thereby he was unable to present himself before the learned Magistrate. Therefore, the order of the learned Magistrate dated 12.07.2019, by which the final form was accepted is fit to be set aside and the learned Additional District Judge has rightly set aside the said order and remanded the matter back to the learned Magistrate for passing a fresh order after giving due opportunity to the informant.

39. The argument of learned counsel for the petitioners that a civil dispute is being given the colour of criminal case is also not appealing to this Court as at the stage of quashing this Court can only go into the allegations and if from the allegations made in the F.I.R., the offences are made out then this Court will not quash the F.I.R. and the entire proceedings under the quashing jurisdiction under section 482 of the Cr.P.C. The law in this regard is well settled by the Hon'ble Supreme Court in the case of ***State of Haryana and Ors. vs. Bhajan Lal and Ors.*** (*supra*) wherein the Hon'ble Supreme Court has delineated the circumstances where an F.I.R. or the charge-sheet can be quashed and in my view, the allegations made in the



F.I.R. do not fall in any of the categories mentioned in the case of *State of Haryana and Ors. vs. Bhajan Lal and Ors.* (*supra*).

40. The argument of learned counsel for the petitioners that while allowing the revision application, the learned Additional District Judge should not have given necessary directions does not find favour in view of the provisions of Sections 398 to 401 of the Cr.P.C. The learned Additional District Judge may issue an incidental order, which is just and proper for deciding the revision application. Therefore, I am of the view that the learned Additional District Judge while hearing the revision application has the power to pass any consequential or incidental order that may be just and proper. Moreover, while passing the impugned order, the learned Additional District Judge has left it on the discretion of the learned Magistrate to pass an order for further investigation on any point including the point of forging of the signature if the learned Magistrate deems it necessary in the interest of justice.

41. In view of the aforesaid discussions, I do not find any error in the impugned order of the learned Additional District Judge. Accordingly, this application is dismissed. The impugned order of the learned Additional District Judge is affirmed.



42. The interim order dated 01.05.2023 passed by this Court is hereby vacated. The learned Magistrate is directed to proceed with the matter as per the revisional order dated 27.08.2021 passed by the learned Additional District Judge.

43. Pending Interlocutory Application(s), if any, stands disposed of.

(Sandeep Kumar, J)

pawan/-

AFR/NAFR	N.A.F.R.
CAV DATE	N/A.
Uploading Date	21.12.2024
Transmission Date	21.12.2024

