

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.31884 of 2023

Arising Out of PS. Case No.-112 Year-2023 Thana- PATRAKARNAGAR District- Patna

ARVIND KUMAR NAG @ A.K. NAG, son of Kamala Prasad Singh,
Resident of Indu Enclave, Flat no. 101, Dr. B. Bhattacharya Road, West Patel
Nagar, P.S. - Shastrinagar, Patna, Distt. - Patna, Bihar.

... .. Petitioner

Versus

1. The State of Bihar
2. Lal Babu Paswan Son of Late Bakhori Paswan R/o Old Kankarbagh, Gate
No. 4, P.S. - Patrakar Nagar, Patna, Distt. - Patna, Bihar

... .. Opposite Parties

Appearance :

For the Petitioner	:	Mr. Rakesh Kumar Singh, Advocate
For the Opposite Party	:	Mr. Sadanand Paswan, Spl. P.P.
For Opp. Party No.2	:	Mr. Rajesh Mohan, Advocate
		Mr. Rajesh Kumar Sinha, Advocate

CORAM: HONOURABLE MR. JUSTICE SANDEEP KUMAR
ORAL JUDGMENT
Date : 05-09-2024

This application has been filed for quashing the
F.I.R. vide Patrakarnagar P.S. Case No.112 of 2023 registered
for the offence under Section 341, 323, 504, 506 and 379 of the
Indian Penal Code and under section 3(1)(r) of the S.C./S.T. Act.

2. As per the F.I.R., the informant namely, Lal
Babu Paswan is an auto rickshaw driver. On 04.02.2023 at about
10.30 A.M. in the morning while he was loading the passenger's
luggage in his auto rickshaw near the gate of Patliputra
University, Patna, around 5 to 7 guards of the University came
near his auto rickshaw and started assaulting him and pulled him
inside the university campus. At that time, the Supervisor
namely, Rakesh Kumar Pandey and D.S.W. namely A.K. Nag



(petitioner) came and directed the guards to take the informant in the room. They also hurled castiest abuses to the informant and thereafter, he was beaten by the said persons. They also snatched Rs.300/- from him and also torn his shirt.

3. Learned counsel for the petitioner submits that the prosecution story in so far as the petitioner is concerned is false and frivolous. The petitioner is a Professor under Patliputra University and has falsely been implicated in the present case despite not being present at the time of occurrence of the said incident and he does not even has any kind of acquaintance with the informant. He further submits that in the C.C.T.V. footage available with University, it appears that the informant was creating a ruckus in front of the University's entrance gate by parking his auto and therefore, the guards of the University told him to park his auto rickshaw on the side of the gate as it was the office time and it was creating difficulties for the people/vehicles entering the university premises through the gate.

4. Learned counsel for the petitioner also submits that the C.C.T.V camera has been installed by the university administration for surveillance of the university premises and it is evident from the C.C.T.V footage that the



petitioner was not even present when the said incident happened.

5. It has been submitted by learned counsel for the petitioner that from perusal of the F.I.R. itself, it is apparent that ingredients of Sections 341, 323, 504, 506, 379 of I.P.C and 3(1) (r) of SC & ST Act as mentioned in the F.I.R are not satisfied against the petitioner. It has also been submitted that Section 379 of the I.P.C. deals with the offence of theft and none of the ingredients of Section 379 are present in the present case so far as the petitioner is concerned. Further, Section 323 of the I.P.C. deals with the punishment for voluntary causing hurt but in the present case no injury report is available which shows that the whole prosecution story is false and fabricated.

6. It has further been submitted that so far as Sections 504 and 506 of the I.P.C. are concerned, which deals with intentional insult with intent to provoke breach of peace and punishment for criminal intimidation, the same is not applicable as per the version of the F.I.R. itself. So far as Section 3 (1) (r) of the SC & ST Act, 1989 is concerned, it is being submitted that the same is not applicable in the present case which is itself apparent from the version of the F.I.R. itself. Section 3 (1) (r) *inter alia* says that "whoever not being a



member of the Schedule Caste and Schedule Tribe intentionally insults or intimidates with intent to humiliate a member of Schedule Caste and Schedule Tribe in any place within public view". However, in the present case, even if the F.I.R. is taken as true and accepted in its entirety, it does not *prima facie* constitute any offence or make out a case against the petitioner u/s 3 (1) (r) of the SC & ST Act, 1989 since the ingredient of "public view" is missing in the present case.

7. It has been argued by learned counsel for the petitioner that at present the petitioner is posted as Professor, Department of Chemistry at College of Commerce under Patliputra University, Patna and additionally he is also Dean Students Welfare (D.S.W.) at the Patliputra University, Patna and he is in-charge of the admission process of the University. From perusal of the F.I.R. itself, it is clear that the informant resides in the vicinity to the office of the Patliputra University, Patna and he is a member of a group of local residents residing near the University, who have in the past created pressure on the petitioner to take illegal admissions in different courses of the University but the petitioner never succumbed to the illegal pressure created by the informant and other unsocial persons, so the informant and other unsocial persons were constantly in



search of an opportunity to harass the petitioner and to drag him in false case which has resulted in the institution of the present F.I.R. against the petitioner without his fault.

8. It has also been argued that the present F.I.R. has been lodged against the petitioner by the local police with undue haste without ascertaining the correct facts. The occurrence, as alleged by the informant in the FIR, is false, concocted and afterthought.

9. Learned counsel for the petitioner has relied upon the decision of the Hon'ble Supreme Court rendered in the case of *State of Haryana & Ors. vs. Bhajan Lal & Ors.* reported in *1992 Suppl (1) SCC 335*.

10. Learned counsel for the opposite party no.2 has filed Vakalatnama but he has not participated in the proceeding before this Court.

11. I have considered the submissions of the petitioners and perused the materials on record.

12. From perusal of the F.I.R. it appears that the thrust of the allegation is against the guards of the University and not against the petitioner. The case against the petitioner appears to be a *malafide* prosecution on the hands of the informant. Even in the case diary, at entry no.16, it has been



stated that in the CCTV footage it was seen that the informant and the guards of the University were squabbling and quarreling with each other. There is no direct material against the petitioner to connect him with the alleged offence. Moreover, from reading of the F.I.R., it also appears that in order to make out a case under S.C./S.T. Act, the informant has created a story of being abused by the petitioner though the petitioner was not present at the time of occurrence as has been seen in the CCTV footage.

13. The Hon'ble Supreme Court in the case of *Mahmood Ali and Others vs. State of U.P and Ors.* reported as *2023 SCC OnLine SC 959* while considering an application in which the quashment of the criminal proceeding was sought on the ground of frivolous and vexatious proceedings instituted with an ulterior motive for wreaking vengeance, has held that the Court has a duty to examine the F.I.R./complaint as the complainant/informant may draft the F.I.R./complaint meticulously ensuring that it include all necessary details and elements of the alleged offence. It is not sufficient for the Court to solely rely on the averments of the F.I.R./complaint to determine the essential ingredients of the offence.

14. It will be relevant to quote paragraph no.13 of the aforesaid decision, which reads as under:-

"13. At this stage, we would like to observe



something important. Whenever an accused comes before the Court invoking either the inherent powers under Section 482 of the Code of Criminal Procedure (CrPC) or extraordinary jurisdiction under Article 226 of the Constitution to get the FIR or the criminal proceedings quashed essentially on the ground that such proceedings are manifestly frivolous or vexatious or instituted with the ulterior motive for wreaking vengeance, then in such circumstances the Court owes a duty to look into the FIR with care and a little more closely. We say so because once the complainant decides to proceed against the accused with an ulterior motive for wreaking personal vengeance, etc., then he would ensure that the FIR/complaint is very well drafted with all the necessary pleadings. The complainant would ensure that the averments made in the FIR/complaint are such that they disclose the necessary ingredients to constitute the alleged offence. Therefore, it will not be just enough for the Court to look into the averments made in the FIR/complaint alone for the purpose of ascertaining whether the necessary ingredients to constitute the alleged offence are disclosed or not. In frivolous or vexatious proceedings, the Court owes a duty to look into many other attending circumstances emerging from the record of the case over and above the averments and, if need be, with due care and circumspection try to read in between the lines. The Court while exercising its jurisdiction



under Section 482 of the CrPC or Article 226 of the Constitution need not restrict itself only to the stage of a case but is empowered to take into account the overall circumstances leading to the initiation/ registration of the case as well as the materials collected in the course of investigation. Take for instance the case on hand. Multiple FIRs have been registered over a period of time. It is in the background of such circumstances the registration of multiple FIRs assumes importance, thereby attracting the issue of wreaking vengeance out of private or personal grudge as alleged.”

15. The Hon’ble Supreme Court on the case of ***State of Haryana & Ors. vs. Bhajanlal & Ors.*** (supra) has delineated the circumstances where an F.I.R. or the charge-sheet can be quashed, which are as follows:-

(i) 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.

(ii) 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.

(iii) 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.

(iv) 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.

(v) 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.

(vi) Where there is an express legal bar engrafted in any of the provisions of the Code or the Act concerned (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 Act concerned, providing efficacious redress for the grievance of the aggrieved party.

(vii) 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.”



16. Considering the aforesaid facts and also the guidelines laid down in the case of *Mahmood Ali* and *Bhajanlal* (supra), I am of the view that the prosecution against the petitioner is nothing but an abuse of the process of the Court and the present F.I.R. has been instituted by the informant with an ulterior motive.

17. In view of the above, this application is allowed. Accordingly, the F.I.R. vide Patrakarnagar P.S. Case No.112 of 2023 registered for the offence under Section 341, 323, 504, 506 and 379 of the Indian Penal Code and under section 3(1)(r) of the S.C./S.T. Act and all consequential proceedings arising out of the aforesaid F.I.R. are hereby quashed with respect to present petitioner only.

(Sandeep Kumar, J)

pawan/-

AFR/NAFR	N.A.F.R.
CAV DATE	N/A
Uploading Date	19.09.204
Transmission Date	19.09.2024

