

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.35596 of 2016

Arising Out of PS. Case No.-111 Year-2015 Thana- SIWAN CITY District- Siwan

1. Pawan Kumar Gupta, son of Upendra Nath Gupta, resident of village- Sri Nagar, Main Road, Mairwa, P.S.- Mairwa, District- Siwan.
2. Ramesh Yadav, son of Butan Yadav resident of village- Badeya Punak, P.S. Darauli, District- Siwan.
3. Anita Devi, wife of Awadesh Kumar, resident of village- Mairwa, Prangaddi, P.S.- Mairwa, District- Siwan.

... .. Petitioner/s

Versus

1. State Of Bihar
2. Satrajeet Upadhyay son of late Ram Janam Upadhyay resident of village Ugrasen Chapar, P.S.- Mairwa, District- Siwan.

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Akhileshwar Kumar Shrivastva, Adv.
For the Opposite Party/s : Mr. Jagdhar Prasad, APP

CORAM: HONOURABLE MR. JUSTICE CHANDRA SHEKHAR JHA
ORAL JUDGMENT

Date : 19-06-2024

Heard learned counsel appearing for the parties.

2. This is an application for quashing the order dated 04.03.2016 passed in Siwan (Town) P. S. Case No. 111 of 2015 (Tr. No. 2359/2016) as passed by learned Chief Judicial Magistrate, Siwan, where cognizance for the offence punishable under section 120(B), 420,



418, 464, 464, 467, 468, 469, 471, 479, 323, 504 of the IPC, was taken against petitioners.

3. The brief fact of prosecution speaks that the land bearing Khata no. 138, survey No. 1895 situated in village-Makuja and Khata No. 151 survey no.262 situated in village- Barase are the ancestors and gifted property of the complainant. The complainant further alleged that in conspiracy to each other the accused no. 1 to 4 and 6 to 10, with the help of accused no.5, have got created the false and forge document in order to humiliate and cause financial loss to the complainant. The complainant further alleged that the accused no. 5 namely Mamta Devi is not daughter of Chandrahas Upadhyay, because Chandrahas Upadhyaya was son of first wife of father of complainant, who passed away issueless and complainant and C.W.1 as well as the three sisters of complainant namely Dharawati, Krishnawati and Saroj are heirs of second wife namely Lal Muni. The complainant further alleged that the accused no.5 Mamta Devi is not related with the family of the



complainant, the complainant further alleged that even after knowledge that said deed is forged and fabricated the accused no. 1 to 4 kept for its using as genuine document. Complainant further alleged that after knowing aforesaid facts, he inquired about the same in registration office and after getting C.C. (certified copy) of sale deed dated 17.01.2015, he found that accused no. 5 are unknown lady, has executed the sale deed in favour of accused nos. 1 to 4 with respect of land of complainant upon which accused nos. 6 to 10 have been shown as witness and identifier. Thereafter when the complainant asked about the same to the accused persons, they refused to answer, rather given threat for dire consequences and on 20.01.2015 all accused persons assembled at the land of complainant and assaulted and abused him. After receiving the aforesaid Complaint petition no. 283 of 2015, the learned Chief Judicial Magistrate, Siwan referred it U/s 156(3) of the Cr.P.C. to the concerned police for its investigation. Thereafter, on 05.04.2015 the Siwan (Town)



police drawn an formal FIR bearing Siwan (T) P.S. Case No. 111 of 2015, under aforesaid sections of the I.P.C against ten named accused persons.

4. The main crux of allegation as per aforesaid complaint is that accused no. 5, namely, Mamta Devi is not the daughter of Chandrahas Upadhyay and therefore the land in issue as per description available under complaint petition was purchased by petitioner nos. 1 and 3 which not belongs to accused no. 5, namely, Mamta Devi, as per ancestral property.

5. It is submitted that petitioner no. 2 is the witness of the sale deed. From the allegations of complaint petition it appears that the said land transaction was made by accused no. 5, namely, Mamta Devi after preparing forged and fabricated documents having intention of cheating, from very inception.

6. With aforesaid allegations the complaint petition was filed before learned C.J.M., Siwan which was, registered as complaint no. 283 of 2015, which was sent



to the concerned police station for investigation after lodging the FIR, consequent upon Siwan Sadar P.S. Case No. 111 of 2015 dated 05.04.2015 was registered for the alleged occurrence punishable under Section 120(B), 420, 418, 464, 467, 468, 469, 471, 479, 323, 504 of the I.P.C.

7. It is submitted by learned counsel for the petitioner that the accused no. 5 as alleged through the Complaint Petition No. 283 of 2015, namely Mamta Devi is the daughter of Chandrahas Upadhyay as per genealogical table which is 'Annexure-2' series of the present petition.

8. It is submitted that from the school leaving certificate and also from the certificate as issued by *nagar panchayat* the accused no. 5, namely, Mamta Devi was shown as the daughter of the Chandrhas Upadhyaya and therefore the identification of Mamta Devi as disputed by the complainant is unfounded and baseless.

9. It is further submitted by the learned counsel that from the narration of complaint petition it can be



gathered easily that for same set of allegations prior to lodging the aforesaid complaint case, one police case as Mairwa P.S. Case No. 207 of 2014 was lodged by complainant, where after due investigations police submitted the final form showing dispute as civil in nature.

10. It is further pointed out by the learned counsel that the complainant/informant till date failed to file the suit as to cancel sale deed executed by accused no. 5, namely, Mamta Devi in favour of petitioner no. 1 and 3.

11. In support of aforesaid submissions and as dispute is civil in nature the present criminal proceeding is nothing but abuse of process of law, Ld. counsel relied upon legal reports of Hon'ble Supreme Court as passed in the matter of ***Mohd. Ibrahim vs. State of Bihar*** as reported in ***(2009) 8 SCC 751*** and ***Usha Chakraborty and Another vs. State of West Bengal and Another*** as reported in ***2023 SCC OnLine SC 90***.



12. Notice validly served upon Opposite Party No. 2, where on earlier occasions Opposite Party No. 2 joined the Court proceedings but he failed to join today.

14. It would be appropriate to reproduce the paragraph nos. 16 and 17 of **Mohd. Ibrahim (Supra)**, which reads as :-

16. *There is a fundamental difference between a person executing a sale deed claiming that the property conveyed is his property, and a person executing a sale deed by impersonating the owner or falsely claiming to be authorised or empowered by the owner, to execute the deed on owner's behalf. When a person executes a document conveying a property describing it as his, there are two possibilities. The first is that he bona fide believes that the property actually belongs to him. The second is that he may be dishonestly or fraudulently claiming it to be his even though he knows that it is not his property. But to fall under first category of "false documents", it is not sufficient that a document has been made or executed dishonestly or fraudulently. There is a further requirement that it should have been made with the intention of causing it to be believed that such document was made or executed by, or by the authority of a person, by whom or by whose authority he knows that it was not made or executed.*

17. *When a document is executed by a person claiming a property which is not his, he is not claiming that he is someone else nor is he claiming that he is*



authorised by someone else. Therefore, execution of such document (purporting to convey some property of which he is not the owner) is not execution of a false document as defined under Section 464 of the Code. If what is executed is not a false document, there is no forgery. If there is no forgery, then neither Section 467 nor Section 471 of the Code are attracted.

15. It would also be apposite to reproduce paragraph Nos. 6, 7, 8 and 10 of ***Usha Chakraborty (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.”

16. In view of the aforesaid factual and legal discussions, it appears that prior to lodging this FIR in issue which is based upon Complaint Case No. 283 of 2015, the police lodged case with same allegation regarding transaction of land which was lodged by the complainant/informant which has been registered as Mairwa P.S. Case No. 207 of 2014 where police after investigation submitted final, saying dispute is civil in nature. Subsequently, after passing of couple of months of aforesaid FIR complaint petition bearing no. 283 of 2015



was filed, which is the basis of FIR in issue i.e., Siwan P.S. Case No. 111 of 2015. From the narration of the FIR, it appears that dispute is purely civil in nature, arises out of land dispute, which has been given criminal color without any cogent materials. It further appears that petitioner no. 2 is the attested witness of the sale deed in dispute between the parties.

17. In view of the aforesaid and by taking guiding note of guidelines as mentioned in para no(s). 16 and 17 of ***Mohd. Ibrahim case (Supra)*** and para no(s). 6, 7, 8 and 10 of ***Usha Chakraborty case (supra)***, the order of cognizance dated 04.03.2016 with all its consequential proceedings, *qua*, all above named petitioners, arising thereof as passed in connection with Siwan (Town) P.S. Case No. 111 of 2015 pending before the learned Chief Judicial Magistrate, Siwan, is hereby quashed and set aside.

18. Hence, this application stands allowed.



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

(Chandra Shekhar Jha, J)

Sudha/-

AFR/NAFR	NAFR
CAV DATE	
Uploading Date	20.06.2024
Transmission Date	20.06.2024

