

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.9188 of 2015

Arising Out of PS. Case No.-521 Year-2008 Thana- KHAGARIA District- Khagaria

Anant Kumar Prasad @ A.k. Prasad Son of Late Gopi Prasad Resident of
Quarter No. 2032, Sector No. - 5A, Bokaro Steel City, P.S. - Bokaro Steel
City, District - Bokari Jharkhand.

... .. Petitioner/s

Versus

1. State Of Bihar and Anr
2. Subodh Kumar Patel, Son of Late Shiv Narayan Singh, Resident of Mohalla
- Dan Nagar, Ward No. 1, P.s. and District - Khagaria.

... .. Opposite Party/s

with
CRIMINAL MISCELLANEOUS No. 12122 of 2015

Arising Out of PS. Case No.-243 Year-2008 Thana- KHAGARIA District- Khagaria

Anant Kumar Prasad @ A.k.prasad Son of Late Gopi Nath Prasad Resident of
Quarters No. 2032, sector - 5A, Bokaro Steel City, P.S. - Bokaro Steel City,
District - Bokaro Jharkhand

... .. Petitioner/s

Versus

1. State Of Bihar and Anr
2. Subodh Kumar Patel, Son of Late Shiv Narayan Singh, REsident of Mohalla
- Dan Nagar, Ward No. 1, P.S. and District - Khagaria.

... .. Opposite Party/s

Appearance :
(In CRIMINAL MISCELLANEOUS No. 9188 of 2015)
For the Petitioner/s : Mr. Sanjay Kumar Pandey No-5, Advocate
For the Opposite Party/s : Mr. Mustaque Alam, APP
(In CRIMINAL MISCELLANEOUS No. 12122 of 2015)
For the Petitioner/s : Mr. Sanjay Kumar Pandey No-5, Advocate
: Mr. Sudhanshu Kumar, Advocate
For the Opposite Party/s : Mr. Aditya Narayan Singh 1, APP
For O.P. No. 2 : Mr. Ranjan Kr. Singh, Advocate

CORAM: HONOURABLE MR. JUSTICE CHANDRA SHEKHAR JHA
ORAL JUDGMENT

Date : 06-03-2024



CRIMINAL MISCELLANEOUS No.9188 of 2015

1. Heard learned counsel for the petitioner and learned counsel for the respondents.

2. The present quashing petition has been preferred to quash the order dated 29.10.2009 passed in Khagaria P.S. Case No. 521 of 2008, where learned Chief Judicial Magistrate, Khagaria took cognizance for the offence punishable under Sections 342, 323, 380 and 452/34 of the Indian Penal Code against the petitioner.

3. Brief case of prosecution as it appears out of Complaint No. 347/2008 (on the basis of which the FIR was registered) that on 30.03.2008 at about 09:00P.M., in the night petitioner along with other accused persons abused, assaulted and snatched certain articles, in the manner as described in the complaint petition; while informant was sitting in the house of his brother-in-law Manish Kumar at Malgodam Road, Khagaria. It has been specifically alleged about petitioner that he snatched a golden ring from the finger of Manish Kumar, the brother-in-law of the complainant. It is also alleged upon the petitioner that he has abused and threatened the complainant and his brother-in-law.

4. It is submitted by learned counsel for the



petitioner that son-in-law of late Harihar Prasad working with Bokaro Steel Plant (SAIL) in the Manager Cadre. It is submitted that said late Harihar Prasad entered into an agreement/sale deed with O.P. No. 2 Subodh Kumar Patel, where during course of transactions certain disputes arose for which the parties agreed to keep sum of Rs. 2,00,000/- with petitioner as he was known to both sides. Said amount was deposited by petitioner in separate bank account with Central Bank, Khagaria Branch, A/C No. 6250 through cheque no. 00933222 on 15. 03.2007, which to be reimbursed to the concerned as per outcome of the settlement. It is submitted that when settlement between the parties failed for any of the reasons informant Subodh Kumar Patel lodged present FIR, where petitioner was not arrayed as an accused but during the course of investigation as it was found that petitioner played role as a mediator and was trusted with Rs. 2,00,000/- charge-sheet was also submitted against him for the offences punishable under Section 406 and 420 of the IPC for which cognizance was taken against petitioner through impugned order dated 21.12.2010.

5. It is further submitted that petitioner was not the beneficiary and his act is also not appearing dishonest from the factual background of the case. It is submitted that the disputes



referred to the Mediation Centre of this High Court, which settled amicably in the terms as under, which duly signed by the parties. It would be appropriate to reproduce the settlement terms of Mediation Centre of Patna High Court, which is as under:-

Patna High Court Mediation Centre

Memorandum of Agreement

Mediation Proceeding No.245 of 2023

**[Arising out of Cr.Misc. No.9188 of 2015 with
Cr.Misc.No.12122 of 2015]**

An agreement made on 18.10.2023 at the Patna High Court Mediation Centre, between, Anant Kumar Prasad @ A.K. Prasad, Son of Late Gopi Prasad, resident of Quarter No.2032, Sector No.5A, Bokaro Steel City, P.S.-Bokaro Steel City, District-Bokari, Jharkhand.

--- Petitioners (First Parties).

And

Subodh Kumar Patel, Son of Late Shiv Narayan Singh, resident of Mohalla-Dan Nagar, Ward No.1, P.S. and District-Khagaria.

--- Opposite Party No.2 (Second party).

Both the parties appeared in the Mediation Proceeding along with their Learned Counsels and ready to resolve the dispute



through the Mediation Proceeding on the following terms and conditions:-

1. That both the parties concerned i.e. Anant Kumar Prasad and Subodh Kumar Patel has co-operated in the long deliberations of this Mediation Proceeding and has agreed to settle the dispute between them. Which has arisen out of the agreement for Sale dated 15.03.2006 and the veracity of that was also in dispute. The said agreement of Sale was for 2546.39 square feet of the land bearing Plot No.9426 situated on Godam Road, Khagaria.
2. That after considering all the money advanced, all the concessions deducted and taking an account of the present situation the parties. It is agreed that Opposite Party No.2 Subodh Kumar Patel will give total amount of Rs.28,50,000/- (Rupees Twenty Eight Lakh Fifty Thousand) by way of the post dated cheques in favour of Land owner namely Mr. Rajesh Kumar, Mr. Rakesh Kumar, Sanjeev Kumar and Prema Devi In the following manner:-

Sl. No.	Cheque No.	Date	Amount	Land Owner
1	000003	26.10.2023	8,00,000/-	In the name of Rajesh Kumar
2	000006	03.11.2023	8,00,000/-	Mr. Rakesh Kumar
3	000007	15.12.2023	8,00,000/-	Mr. Sanjiv Kumar
4	591286	05.01.2024	4,50,000/-	Mrs. Prema Devi

3. That the opposite part No.2 namely Subodh Kumar Patel agreed upon to give an amount of Rs. 28,50,000/- (Rupees Twenty Eight Lakh Fifty Thousand) to the



Land owners. Out of which an amount of Rs.8,00,000/- (Rupees Eight Lakh) bearing cheque No.000003 dated 26.10.2023 of UCO Bank branch Kahagaia is given to Mr. Rajesh Kumar, Son of Late Harihar Prasad. An amount of Rs.8,00,000/- (Rupees Eight Lakh) bearing cheque No.000006 dated 03.11.2023 of UCO Bank branch Kahagaia is given in the name of Mr. Rakesh Kumar, Son of Late Harihar Prasad. An amount of Rs.8,00,000/- (Rupees Eight Lakh) bearing cheque No.000007 dated 15.12.2023 of UCO Bank branch Kahagaia is given in the name of Sanjiv Kumar, Son of Late Harihar Prasad and last cheque of an amount of Rs. 4,50,000/-(Rupees Four Lakh Fifty Thousand) bearing cheque No.591286, dated 05.01.2024 of Bihar Garmin Bank Mathurapur, Khagaria in the name of Prema Devi wife of Late Harihar Prasad.

4. That all the cheques have been handed over to one of Land owner namely Mr. Rajesh Kumar, Son of Late Harihar Prasad, and photo copy all the cheques are kept on record.

5. That both the parties agreed upon after receiving an amount of Rs.24,00,000/- (Rupees Twenty Four Lakh) the Sale deed will be executed in favour of Sima Rani wife of Subodh Kumar Patel an amount of Rs.4,50,000/- (Rupees Four Lakh Fifty Thousand) will be given after registry and the same amount will be endorse in the Sale deed and after receiving the said amount original copy of chirkut will be handed over to the Sima Rani wife of Subodh Kumar Patel.

6. That thereafter the Subodh Kumar Patel and the concerned persons Rajesh Kumar,



Rakesh Kumar, Sanjeev Kumar, Prema Devi and Anant Kumar Prasad shall file Compromise petitions in all the Civil and Criminal Cases pending in different Courts in Khagaria or in other Courts.

7. That both the parties agreed upon that all the exercise in respect of payment, execution of the Sale deed and after filing of compromise petition will be completed till March, 2024.

8. That both the parties agreed upon to restore their good and friendly relationship after forgetting all the acrid phases of life and restore their inter-family relation as it was at the time of Late Harihar Prasad.

9. That the aforesaid contents of the agreement have been read over and explained into Hindi, which have fully been understood and accepted by the parties.

Hence, in the above terms and condition a settlement has been arrived between the parties and both have signed and put their signature on the agreement.

6. Learned APP duly assisted by learned counsel appearing on behalf of O.P. No. 2 affirmed that matter has been compromised before the Mediation Centre of this Court and as now, no disputes are pending between the parties.

7. Learned counsel referred legal report of Hon'ble Supreme Court, as reported through **Usha Chakraborty and Another Vs. State of West Bengal and Another** as reported in



(2023) SCC Online SC 90. It would be apposite to reproduce the paragraph no(s). 6, 7, 8, 9 and 10 which reads as under:

6. In *Paramjeet Batra v. State of Uttarakhand*, 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 v. State of Kerala*, 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 v. Sanjay Sharma*, 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.

9. In the decision in *State of Haryana v. Bhajan Lal*, a two Judge Bench of this Court considered the statutory provisions as also the earlier decisions and held as under:—

(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.

10. In Neeharika Infrastructure Pvt. Ltd. v. State of Maharashtra, 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.”

8. In view of aforesaid factual and legal discussions as matter appears compromised out of mediation proceeding between the parties as discussed above, continuing with the legal proceedings would only amount to abusing the process of law. Accordingly, impugned order of cognizance dated 29.10.2009 with all its consequential proceedings, *qua*, petitioner arising thereof as passed in Khagaria P.S. Case No. 521 of 2008, pending before learned Chief Judicial Magistrate, Khagaria is hereby quashed and set aside.

9. The application stands allowed.

10. Let a copy of this order be sent to learned Trial Court, immediately.



CRIMINAL MISCELLANEOUS No. 12122 of 2015

1. Heard learned counsel for the petitioner and learned counsel for the respondents.

2. The present quashing petition has been preferred to quash the order dated 21.12.2010 passed in Khagariya P.S. Case No. 243 of 2008, where learned Judicial Magistrate 1st Class, Khagariya took cognizance for the offence punishable under Sections 406, 420 and 34 of the Indian Penal Code against the petitioner.

3. From the brief prosecution case it appears that in the present case informant Subodh Kumar Patel and the accused persons (sons of Late Harihar Prasad) are family friends. Late Harihar Prasad, during his life time, use to borrow money from Subodh Kumar Patel and in-lieu of that he had executed a couple of sale deeds in favour of the wife of the Subodh Kumar Patel. In that sequence, just to compensate some money already taken; the Harihar Prasad has promised to execute a sale deed for the land in dispute. But it was postponed owing to a dispute in accounts. Unfortunately, thereafter, Harihar Prasad died. Thereafter due to the heavy floods the registration of land could not done. Presently when the sons of



Late Harihar Prasad insisted for the accounting and the balance of payment before the sale deed is executed the present conflict and prosecution arose. It is further submitted that the accused persons and their father have contracted for sale of certain properties situated in Khagaria Municipal area on 15.03.2007. An agreement was signed between the parties and it was agreed by the parties that by 15.09.2007; the sale deed will be executed between the parties and the remaining amount will be paid on execution of sale deed. It is alleged in the FIR that the accused persons are not executing the sale and they had suppressed certain material facts in negotiations.

4. It is submitted by learned counsel for the petitioner that son-in-law of late Harihar Prasad working with Bokaro Steel Plant (SAIL) in the Manager Cadre. It is submitted that said late Harihar Prasad entered into an agreement/sale deed with O.P. No. 2 Subodh Kumar Patel, where during course of transactions certain disputes arose for which the parties agreed to keep sum of Rs. 2,00,000/- with petitioner as he was known to both sides. Said amount was deposited by petitioner in separate bank account with Central Bank, Khagaria Branch, A/C No. 6250 through cheque no. 00933222 on 15.03.2007, which to be reimbursed to the concerned as per outcome of the



settlement. It is submitted that when settlement between the parties failed for any of the reasons informant Subodh Kumar Patel lodged present FIR, where petitioner was not arrayed as an accused but during the course of investigation as it was found that petitioner played role as a mediator and was trusted with Rs. 2,00,000/- charge-sheet was also submitted against him for the offences punishable under Section 406 and 420 of the IPC for which cognizance was taken against petitioner through impugned order dated 21.12.2010. It is submitted that for said reason informant also lodged case against petitioner as Khagaria P.S. Case No. 521 of 2008 for the offences under Section 342, 323, 380 and 452/34 of IPC, which appears compromised on mediation before this Court, when petitioner preferred quashing petition as Cr. Misc. No. 9188 of 2015 to quash Khagaria P.S. Case No. 521 of 2008.

5. It is further submitted that petitioner was not the beneficiary and his act is also not appearing dishonest from the factual background of the case. it is submitted that the disputes referred to the Mediation Centre of this High Court, which settled amicably in the terms as under, which duly signed by the parties. It would be appropriate to reproduce the settlement terms of Mediation Centre of Patna High Court, which is as



under:-

Patna High Court Mediation Centre

Memorandum of Agreement

Mediation Proceeding No.245 of 2023

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--- Petitioners (First Parties).

And

Subodh Kumar Patel, Son of Late Shiv Narayan Singh, resident of Mohalla-Dan Nagar, Ward No.1, P.S. and District-Khagaria.

--- Opposite Party No.2 (Second party).

Both the parties appeared in the Mediation Proceeding along with their Learned Counsels and ready to resolve the dispute through the Mediation Proceeding on the following terms and conditions:-

1. That both the parties concerned i.e. Anant Kumar Prasad and Subodh Kumar Patel has co-operated in the long deliberations of this Mediation Proceeding and has agreed to settle the dispute



between them. Which has arisen out of the agreement for Sale dated 15.03.2006 and the veracity of that was also in dispute. The said agreement of Sale was for 2546.39 square feet of the land bearing Plot No.9426 situated on Godam Road, Khagaria.

2. That after considering all the money advanced, all the concessions deducted and taking an account of the present situation the parties. It is agreed that Opposite Party No.2 Subodh Kumar Patel will give total amount of Rs.28,50,000/- (Rupees Twenty Eight Lakh Fifty Thousand) by way of the post dated cheques in favour of Land owner namely Mr. Rajesh Kumar, Mr. Rakesh Kumar, Sanjeev Kumar and Prema Devi In the following manner:-

Sl. No.	Cheque No.	Date	Amount	Land Owner
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3	000007	15.12.2023	8,00,000/-	Mr. Sanjiv Kumar
4	591286	05.01.2024	4,50,000/-	Mrs. Prema Devi

3. That the opposite part No.2 namely Subodh Kumar Patel agreed upon to give an amount of Rs. 28,50,000/- (Rupees Twenty Eight Lakh Fifty Thousand) to the Land owners. Out of which an amount of Rs.8,00,000/- (Rupees Eight Lakh) bearing cheque No.000003 dated 26.10.2023 of UCO Bank branch Kahagaia is given to Mr. Rajesh Kumar, Son of Late Harihar Prasad. An amount of Rs.8,00,000/- (Rupees Eight



Lakh) bearing cheque No.000006 dated 03.11.2023 of UCO Bank branch Kahagaia is given in the name of Mr. Rakesh Kumar, Son of Late Harihar Prasad. An amount of Rs.8,00,000/- (Rupees Eight Lakh) bearing cheque No.000007 dated 15.12.2023 of UCO Bank branch Kahagaia is given in the name of Sanjiv Kumar, Son of Late Harihar Prasad and last cheque of an amount of Rs. 4,50,000/-(Rupees Four Lakh Fifty Thousand) bearing cheque No.591286, dated 05.01.2024 of Bihar Garmin Bank Mathurapur, Khagaria in the name of Prema Devi wife of Late Harihar Prasad.

4. That all the cheques have been handed over to one of Land owner namely Mr. Rajesh Kumar, Son of Late Harihar Prasad, and photo copy all the cheques are kept on record.

5. That both the parties agreed upon after receiving an amount of Rs.24,00,000/- (Rupees Twenty Four Lakh) the Sale deed will be executed in favour of Sima Rani wife of Subodh Kumar Patel an amount of Rs.4,50,000/- (Rupees Four Lakh Fifty Thousand) will be given after registry and the same amount will be endorse in the Sale deed and after receiving the said amount original copy of chirkut will be handed over to the Sima Rani wife of Subodh Kumar Patel.

6. That thereafter the Subodh Kumar Patel and the concerned persons Rajesh Kumar, Rakesh Kumar, Sanjeev Kumar, Prema Devi and Anant Kumar Prasad shall file Compromise petitions in all the Civil and Criminal Cases pending in different Courts in Khagaria or in other Courts.

7. That both the parties agreed upon that all



the exercise in respect of payment, execution of the Sale deed and after filing of compromise petition will be completed till March, 2024.

8. That both the parties agreed upon to restore their good and friendly relationship after forgetting all the acrid phases of life and restore their inter-family relation as it was at the time of Late Harihar Prasad.

9. That the aforesaid contents of the agreement have been read over and explained into Hindi, which have fully been understood and accepted by the parties.

Hence, in the above terms and condition a settlement has been arrived between the parties and both have signed and put their signature on the agreement.

6. Learned APP duly assisted by learned counsel appearing on behalf of O.P. No. 2 affirmed that matter has been compromised before the Mediation Centre of this Court and as now, there are no disputes pending between the parties.

7. Learned counsel referred legal report of Hon'ble Supreme Court, as reported through **Usha Chakraborty and Another Vs. State of West Bengal and Another** as reported in **(2023) SCC Online SC 90**. It would be apposite to reproduce the paragraph no(s). 6, 7, 8, 9 and 10 which reads as under:

6. In **Paramjeet Batra v. State of Uttarakhand**, 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 v. State of Kerala, 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 v. Sanjay Sharma*, 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.

9. In the decision in *State of Haryana v. Bhajan Lal*, a two Judge Bench of this Court considered the statutory provisions as also the earlier decisions and held as under:—

(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.

10. In Neeharika Infrastructure Pvt. Ltd. v. State of Maharashtra, 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.”

8. In view of aforesaid factual and legal discussions as matter appears compromised out of mediation proceeding between the parties as discussed above, continuing with the legal proceedings would only amount to abusing the process of law. Accordingly, impugned order of cognizance dated 21.12.2010 with all its consequential proceedings, *qua*, petitioner arising thereof as passed in Khagariya P.S. Case No. 243 of 2008, pending before learned Judicial Magistrate, 1st Class, Khagariya is hereby quashed and set aside.

9. The application stands allowed.

10. Let a copy of this order be sent to learned Trial Court, immediately.

(Chandra Shekhar Jha, J.)

S.Tripathi/-

AFR/NAFR	AFR
CAV DATE	
Uploading Date	
Transmission Date	

