

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.36704 of 2016**

Arising Out of PS. Case No.-87 Year-2010 Thana- BHAGALPUR COMPLAINT CASE
District- Bhagalpur

Uday Narayan Singh and Ors

... .. Petitioner/s

Versus

State Of Bihar and Anr

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Swapnil Kumar Singh

For the Opposite Party/s : Mr. Navin Kr. Pandey, APP

**CORAM: HONOURABLE MR. JUSTICE CHANDRA SHEKHAR JHA
ORAL JUDGMENT**

Date : 20-06-2024

Heard learned counsel appearing for the parties.

2. This is an application for quashing the order dated 06.01.12 passed in compliant case no 87 of 2010 passed by learned Judicial Magistrate, 1st class, Bhagalpur where cognizance for the offence punishable under section 406, 323, 379, 506, 354/34 of Indian penal code was taken against petitioners.

3. The brief fact of prosecution speaks that O.P. No. 2 filed complaint case on 18.01.2010 for the alleged occurrence dated 12.01.2010, alleging that the late husband of O.P. No. 2 entered into an agreement with the



father of petitioner No. 1 namely late Janki Prasad Singh for the purchase of land mentioned in the complaint petition and entered into an agreement on 03.06.2007 and for that the husband of the O.P. No. 2 paid Rs. 50,000/- as an advance. As per complaint, it is agreed between the parties that till 28.02.2006 the registry will be made. As per agreement the father of petitioner no. 1 also executed *kewala* (sale-deed) in favour of several person but in the month of April, 2006 the father of petitioner no. 1 died and he became the owner of the aforesaid land. It is further alleged that after death of the father of petitioner no. 1, he also took money and told that total amount he has taken is for 21 *kattha* and after getting money of total of 79 *khattha*, the *kewala* will be executed and on several dates the husband of the O.P. No. 2 deposited a total sum of Rs. 8,06,900/- and assured that all the advance payment will be adjusted with the total amount at the time of *kewala*. It is further alleged that after receiving the aforesaid amount the petitioner no. 1 did not took any



interest in executing of *kewala* (sale-deed) and for that on several occasions the panchaity was made in which the petitioner no. 1 assured that he will execute the *kewala* but nothing has been done as per earlier assurance. It was assured further that by 05.11.2009, *kewala* will be executed but nothing was done then the husband of O.P. No. 2 (now dead) went to the house of petitioners on 10.12.2009 on which the named accused started abusing with filthy language by taking caste name and also threaten that if again they will come here then they will be killed and after hearing this the husband of O.P. No. 2 fell ill and died. It is also alleged that on 12.01.2010 at about 12 pm, O.P. No. 2 along with one rajesh kumar rajak went to the house of petitioner no. 1 for executing the land but when the complainant and other person reached to the *ratapur deori more* they saw that the petitioner no. 1 went along with Chandrika Singh, petitioner no. 2, towards his house when the son of complainant salute him then they started abusing him and later on petitioner no. 2



assaulted him by his shoes and also petitioner no. 1 tried to outrage her modesty and also snatched away the silver chain and titan watch from the hand of son of the O.P. No. 2. It is further alleged that O.P. No. 2 went to the Kahalgoan Police Station for lodging FIR but the FIR was not lodged on which the present complaint is being lodged against the named accused person for taking legal action against them.

4. It is submitted by the learned counsel for the petitioner that present criminal proceedings was lodged by complainant/informant out of ulterior and oblique motive in the background of land dispute which is purely civil in nature.

5. It is submitted that for the present cause of action the husband of O.P. No. 2 lodged a case on 27.09.2008 which has been registered as Kahalgaon P.S. Case No. 518 of 2008 for the offences punishable under Sections 420 and 406 of I.P.C.



6. It is submitted that the cognizance order of the aforesaid case was challenged through Criminal Revision No. 125 of 2010 before the learned Sessions Court which was set aside vide order dated 26.05.2010 (Annexure-3 of the petition).

7. It is submitted that during the pendency of aforesaid Revision petition, for the same cause of actions, the present complaint case was lodged, where again the cognizance for the offences punishable under section 406, 323, 379, 506, 354/34 of the I.P.C. was taken by the Id. trial court.

8. It is pointed out that the order of cognizance as passed by Id. trial court was again challenged through Criminal Revision No. 83 of 2012 before the Id. sessions court, but this time the Id. revisional court didn't interfere with cognizance order.

9. It is submitted that for said reason the present petition is filed where the criminal prosecution is nothing but a malicious prosecution out of ulterior and oblique



motive in the background of the land dispute which is purely civil in nature.

10. In support of aforesaid submissions, learned counsel relied upon legal reports of Hon'ble Supreme Court as reported 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*** and ***State of Haryana and Others vs. Bhajan Lal and Others*** reported in ***1992 Supp (1) Supreme Court Cases 335***.

11. Notice validly served upon Opposite Party No. 2, but she failed to join today.

12. Learned APP for the State opposed the prayer for quashing petition but fairly conceded that the occurrence took place in the background of land dispute.

13. 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.*



14. It would be apposite to reproduce relevant 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.”

15. It would be further appropriate to reproduce the paragraph no. 102 of the Apex Court decision in the case of ***Bhajan Lal Case (supra)***, which reads as under:-

"102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure



the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first informant 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 persons 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."

16. In view of the aforesaid factual and legal submissions, as the present criminal prosecution arises out of land dispute where almost for similar allegation an FIR was lodged earlier as Kahalgaon P.S. Case No. 518 of



2018 where the cognizance was taken by Id. trial court but was set aside by the Id. Revisional court through Criminal Revision No. 125 of 2010 as discussed above.

17. It further appears more or less the allegation is same as raised through present criminal complaint where the crux of allegations are founded upon land dispute. It appears that the case of the petitioner get covers by the legal issue as settled by Hon'ble Supreme Court in the matter of ***Mohd. Ibrahim case (Supra)*** and also in ***Usha Chakraborty case (supra)***, same also appears supported by the ratio of ***Bhajan Lal Case (supra)*** suggesting that present criminal prosecution is of malicious prosecution arising out of ulterior and oblique motive in the background of land dispute.

18. Accordingly, the order of cognizance dated 06.01.2012 with all its consequential proceedings, *qua*, all above named petitioners, arising thereof as passed in connection with Complaint Case No. 87 of 2010 pending



before the learned Judicial Magistrate 1st class, Bhagalpur,
is hereby quashed and set aside.

19. It is made clear that the revisional order dated 31.05.2016 passed in Criminal Revision No. 83 of 2012 passed by 1st Additional Sessions Judge, Bhagalpur is also hereby quashed and set aside with all its consequential proceedings.

20. Hence, this application stands allowed.

21. 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	21.06.2024.
Transmission Date	21.06.2024.

