

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.48336 of 2019

Arising Out of PS. Case No.-580 Year-2019 Thana- KOTWALI District- Patna

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Lalan Kumar Son Of Late Kamleshwari Prasad Resident Of House No. 239,
Lodipur, Chhajubag, P.S.- Gandhi Maidan, Distt - Patna.

... .. Petitioner/S

Versus

The State Of Bihar

... .. Opposite Party/s

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Appearance :

For the Petitioner/s	:	Mr. N.K. Singh, Adv.
		Mr. Chandan Kumar, Adv.
For the Opposite Party/s :		Mr.Usha Kumari 1

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CORAM: HONOURABLE MR. JUSTICE SUNIL KUMAR PANWAR
CAV JUDGMENT

Date : 26-07-2024

Heard learned counsel for the petitioner, learned
counsel for the informant and learned A.P.P. for the State.

2. This application has been filed invoking the
extraordinary writ jurisdiction of this court to quash and
cancel the First Information Report giving rise to Kotwali
P.S. Case No. 580 of 2019 (Annexure P/8, page No. 48-
58) dated 30.06.2019 registered u/s 419, 420, 465, 468,
471, 193, 120(B) of the Indian Penal code.

3. Prosecution case in impugned F.I.R., which has
been instituted on the basis of self statement of Sri. Ram



Shankar Singh (O.P. No. 2), inspector-cum-S.H.O.,
Kotwali Police Station interalia is as under:-

"My name is Ram Shankar Singh, age 47, posted as Police Inspector-cum-S.H.O. of Kotwali Police Station, Patna. Today dated 30.06.2019 at around 20:00 hrs., I record my own statement that through the supervision note issued by the office of Additional Director General of Police (Law and Order), Bihar, Patna vide Memorandum No. 3578/XL, dated 24.06.2019 and consequently the memorandum No. 2535 dated 30.06.2019 issued by the Senior Superintendent of Police, Patna directions have been received with regard to Kotwali P.S. Case No. 571 of 2017 instituted by Lalan Kumar, Buddha Colony P.S. Case No. 383 of 2017 instituted by Dhairya Kumar and Kotwali P.S. Case No. 664 of 2017 instituted by Nirbhay Sinha, under a conspiracy to falsely implicate Nirbhay Singh and his wife Mithilesh Singh and others in a cheque bounce case of about one crore rupees. The Investigating Officers of all three cases were involved in the conspiracy and they joined in the effort to recover the said amount by



fabricating false evidence. Therefore, an FIR should be registered under Sections 419, 420, 465, 468, 471, 193, 120(B) of Indian Penal Code against the Investigating Officers of the three cases, viz., (1) A.S.I. Vikrmaditya Jha (2) S.I. Manish kumar and the informants of three cases, namely, Lalan Kumar, Dhairya Kumar and Nirbhay Sinha, in which the date of the incident will be the as the date of the related cases. It is noteworthy that on the incident will be the same as the date of the related cases. It is noteworthy that on the basis of the application of complainant Lalan Kumar, s/o Late Kamleshwari Prasad alleging embezzlement of Rs. 17,50,000/- (seventeen lakh fifty thousand rupees) Kotwali P.S. Case No.571/17 dated 23.10.17, under Section 406, 467, 468, 471, 472, 120(B), 419, 420, 416 of Indian Penal Code Section 138 N.I. Act and Section 3(1)X3(1)r3(2)(B) of SC/ST Act has been instituted, in which the period of incident has been mentioned as 25.09.2015 to 04.10.2017 and place has been mentioned as Sona Medical, P.S. Kotwali, District Patna. In reference to the application submitted by



Nirbhay Sinha on the allegation of embezzling Rs. 43,00,000/- (forty three lakh rupees), Kotwali P.S. Case No. 664 of 2017 dated 02.12.2017, under Section 417, 418, 419, 420, 409, 467, 468, 120(B) of Indian Penal Code and Section 138 of N.I. Act were registered, the date of incident being 2015, place of occurrence is shown as Frazer Road, Abhay Bhawan, P.S. Kotwali, District Patna. The I.O. of both the cases was Vikramaditya Jha.

Therefore, in the light of the above instructions, the informant of Kotwali P.S. Case No. 571 of 2017, Lalan Kumar, son of Kamleshwari Prasad, of Lodipur police station, Kotwali, District Patna, 2. informant of Kotwali P.S. Case No. 664 of 2017, Nirbhay Sinha, son of Narendra Sinha of Abhay Bhavan, 4th Floor, Fraser Road, Patna, 3. The then investigating Officer A.S.I. Vikramaditya Jha on charges of involvement in the conspiracy of the informant of both the cases, by fabricating false evidence and trying to help in recovering the said amount are being made accused in charges u/s 419, 420, 465, 468, 471, 193, 120(B) and FIR is



instituted and this case will be investigated by A.S.I. Jai Prakash Singh.”

4. The petitioner had lodged FIR being Numbered as Kotwali P.S. Case No. 571 of 2017, registered on 23.10.2017, for offences under Sections 406, 467, 468, 471, 472, 120(B), 419, 420, 416 of the Indian Penal Code, Section 138 of N.I. Act and Sections 3(I)(X), 3(I) read with Section 3(2)(B) of SC/ST Act against the Mr. Nirbhay Singh, his wife Mrs. Mithilesh Singh, brother Mr. Ajay Singh and father Mr. Joginder Singh, alleging therein inter alia that on request of Mr. Nirbhay Singh for advance of money the petitioner on assurance paid an amount of Rs. 17,50,000/- (seventeen lakh fifty thousand rupees) at different date after taking loan from his relatives/ friends. It is further alleged that when Mr. Nirbhay Singh failed to return the money, the petitioner asked time and again to return the money received by him. Ultimately, Mr. Nirbhay Singh handed over five post dated cheques to the petitioner in lieu of satisfy the advance amount taken by him. When the cheques were presented in the Bank for encashment the cheques were return back with noting of insufficient fund, thereafter the petitioner inform Mr. Nirbhay Singh and others that the cheques issued by him have return back and served legal notice upon Mr. Nirbhay Singh and others. On the basis of the statement made hereinabove Kotwali P.S. Case No. 571 of 2017 has been registered. (annexed with the petition and marked as



Annexure P/1).

5. The Police after recording the statement of the witnesses u/s 161 of Cr.P.C. and after completing the investigation on the basis thereof submitted final report holding accusation true against the accused Mr. Nirbhay Singh and his wife Mrs. Mithilesh Singh vide final report No. 6/2018 (which is annexed with the petition and marked as Annexure P/2).

6. After applying the judicial mind, the learned competent Court of its jurisdiction, after perusal of FIR, Case Diary and final report, had taken cognizance for the offences u/s 406, 467, 468, 471, 472, 120(B), 419, 420, 416 of Indian Penal Code, Section 138 of N.I. Act and Section 3(I)(X), 3(I) read with Section 3(2)(B) of SC/ST Act. (Annexed with the petition as Annexure P/3). The case has been transmitted to the competent Court for trial and disposal.

7. It is submitted on behalf of the petitioner that a complaint was made by accused Mithlesh Singh before



chairman, Women's Commission Delhi (Annexed as Annexure P/4, page 33-42) alleging mistreatment by Bihar Police during arrest and leveling allegation of false implication and apprehension of improper and unfair investigation. The aforesaid complaint was forwarded to the D.G.P., Bihar, Patna for necessary action. (Annexed as Annexure P/5, Page 43) pursuant to which notice dated 05.04.2019 (Anexure P/6, page 44) was issued to the petitioner who appeared and filed a detailed representation on 23.06.2019 (Annexure P/7, page 45-47) with respect to the merits of the case.

8. It is submitted on behalf of the petitioner that the said impugned F.I.R. is result of political vandatta by misusing police power to falsely implicate the petitioner. On the pretext of the above the police authority have instituted the instant impugned F.I.R. which is patently illegal and in the teeth of police's own investigatory findings which have not been entertained with any court of law and have attained finality.



9. In the entire F.I.R. including the memorandum issued by the office of A.D.G. (Law and Order) and Senior superintendent of police, Patna, not a whisper has been made with respect to what was forged or fabricated by this petitioner while instituting Kotwali P.S. Case No. 571 of 2017.

10. It is further submitted that even in the Counter affidavit filed by Opposite Party No. 2, not a whisper has been made with regard to any forgery or fraud committed by the petitioner while instituting Kotwali P.S. Case No. 571 of 2017. Rather surprisingly, a patently illegal final form dated 06.11.2019 (Annexure R/1, page no. 8) showing the case to have been found untrue against the accused persons including against earlier charge sheeted accused persons Nirbhay Singh and his wife Mithlesh Singh, has been enclosed.

11. It is further submitted that when no further evidence has been shown to have been collected by the police, which is prerequisites and a *sine qua non*



for filing further report. It is a direct breach of provision of Section 173(8) of Cr.P.C.

12. It is further submitted that neither in the instant FIR (Annexure P/8) nor in the further report submitted on 06.11.2019 (Annexure R/1) in connection with the earlier Kotwali P.S. Case No. 571 of 2017 (Annexure P/1), there is absolutely no material to show that the petitioner had instituted a false case. There is absolutely no reference to any false document having being prepared within the meaning of Section 464 of Indian Penal Code, which would justify the charge of fraud and fabrication. The case instituted by the petitioner was one of cheating, defrauding and dishonoring of cheque, which carries with it as statutory presumption of offence.

13. It is further submitted that there are specific panel provisions dealing with the non cognizable offence of institution of false F.I.R :-

(i) Section 182 of I.P.C. states that if any



person deliberately lodges false FIR before the magistrate, Government or police, shall be punished with 6 months of imprisonment or fine upto Rs. 1,000/- or both.

(ii) Section 211 of I.P.C. states that if a person institutes criminal proceeding based on false charges deliberately, shall be punished up to 2 years of imprisonment or fine or both and if the false charges made is serious enough to render life time imprisonment or death sentence then such person shall be held liable with 7 years of imprisonment and fine also. Likewise, the errant cops could also be punished for intentionally causing injury to the person in terms of false F.I.R. by using their power in unlawful means.

14. It is further submitted that the present F.I.R. is wholly illegal, arbitrary and based on no material disclosing cognizable offence and is fit to be quashed in the interest of justice. Since the foundation of lodging Kotwali case No. 580 of 2019 is the memo



No. 3578/XL dated 24.06.2019, issued under signature of Additional Director General of Police (law and order) Bihar, Patna, which is also a part of F.I.R. be also quashed.

15. *In contra*, learned A.P.P. argued and submitted that the F.I.R. is based on cognizable offence and the same is fit to be sustainable. The instant petition has no merit and is fit to be dismissed. Opposite party No. 2 has filed counter affidavit and mentioned in it that the petitioner is one of the named accused of Kotwali P.S. Case No. 580 of 2019 and during investigation, the case has been found true against him as well as against others. The petitioner and other co-accused persons have been found to be indulged in false implication of innocent citizens and based thereupon the F.I.R. was instituted. It is further mentioned that one Vikramaditya Jha was the Investigating Officer of the above Kotwali P.S. Case and he in connivance with the petitioner filed a chargesheet (Annexure P/2), however, above



representation filed by the victims, the matter was examined at higher level and it was found that this petitioner in connivance with co-accused and other persons falsely lodged atleast three criminal cases against Nirbhay Singh and Mithilesh Singh. It is further submitted that upon consideration at the highest level it was found that this petitioner is instrumental in implicating innocent citizens falsely in connivance with police officials and others and accordingly the present case was instituted against him as well as on others. In all three case, filed against Nirbhay Singh and Mithilesh Singh, later, the police have filed final forms showing the case to be untrue/false.

16. Learned counsel appearing on behalf of the opposite party No. 2 also submitted via counter affidavit that the instant petition of the petitioner for quashing the F.I.R. (Kotwali P.S. Case No. 571 of 2017) is fit to be dismissed and is not sustainable as the same is based without merit.



17. I have gone through the entire material available on record as well as rival submissions made on behalf of the respective parties. It is necessary to consider the nature and scope of the inherited power of the High Court under Section 482 of Cr.P.C. The said Section saves the inherent power of the High Court to make fresh orders as measures necessary in three different situations.

(a) to give effect to an order under this Court.

(b) to prevent abuse of the process of the Court.

(c) to otherwise secure the ends of justice.

18. In the case of **Rajiv Thapar and others Vs. Madan Lal Kapoor reported in (2013) 3 SCC 330**, the Hon'ble Supreme Court laid down the four steps test for quashment in exercise of inherent power of the High Court under Sections 482 of Cr.P.C. Those are as under:-



"30.1. Step one: Whether the material relied upon by the accused is sound, reasonable and indubitable ie. the material is of sterling and impeccable quality?

30.2. step two: Whether the material relied upon by the accused would rule out the assertions contained in the charges levelled against the accused i.e. the material is sufficient to reject and overrule the factual assertions contained in the complaint i.e. the material is such as would persuade a reasonable person to dismiss and condemn the factual basis of the accusations as false?

30.3. Step three: Whether the material relied upon by the accused has not been refuted by the prosecution/complaint; and/or the material is such that it cannot be justifiably refuted by the prosecution/complaint?

30.4 Step four: whether proceeding with the trial would result in an abuse of process of the Court, and would not serve the ends of justice?

30.5. If the answer to all the steps is in the affirmative, the judicial conscience of the High Court should persuade it to quash such criminal proceedings in exercise of power vested in it under Section 482 of Cr.P.C. Such exercise of power, besides doing justice to the accused, would save precious court time, which would otherwise be wasted in holding such a trial (as well as proceedings arising therefrom) specially when it is clear that the same would not conclude



in the conviction of the accused.”

19. I find proper to recapitulate at this stage and relevant to quote the order dated 17.10.2019 passed in this Cr. Misc. application:-

“ The petitioner has challenged the F.I.R. of Kotwali P.S. Case No. 580 of 2019 on the ground that the petitioner is informant of Kotwali P.S. Case No. 571 of 2017, a copy at Annexure P/1. After investigation of the case, police submitted chargesheet in Kotwali P.S. Case No. 571 of 2017 vide annexure P/2 against some of the accused and investigation was pending against others. Thereafter, learned magistrate took cognizance of the offences of which chargesheet was submitted on 15.02.2018 vide Annexure 3.

The present F.I.R., lodged by the officer-in-charge of Kotwali P.S. Case, shows that Cr. Case lodged by the petitioner vide Kotwali P.S Case No. 571 of 2017 and other Cr. Cases lodged by other informant were forged and fabricated, just to defraud and cheat the



accused persons of those cases.

The conclusion of the police is surprising on in absence of contrary investigation report submitted in the case lodged by the petitioner. Hence, no coercive steps shall be taken against the petitioner in connection with Kotwali P.S. Case No. 580 of 2019, till further order.”

20. In this case, the petitioner had registered the F.I.R. in Kotwali P.S. case No. 571 of 2017 which is said to be based on fraud and forgery and the same is basis for institution of impugned F.I.R., is based on documentary evidence including cheque issued by accused persons, acknowledgment of receipt issued by accused persons, copy of legal notice, postal receipt and memo issued by Punjab National Bank, none of which were found to be fake or false during investigation, either in the instant case or during the course of investigation in Kotwali P.S. Case No. 571 of 2017 itself. On the basis of final form, after completing the investigation, the Court concerned has taken cognizance



after finding the case prima facie true against the accused persons. It is a candid law that when case has been registered under proper sections and after completing the investigation in due process and submitting the chargesheet in due Sections against the accused persons and the concerned Court has taken cognizance on the basis of available evidence in the Case Diary. No option remained in that case by the police that the police have taken recourse in said case by making controverted and new story in respect of the said F.I.R. There is no provision in criminal procedure except re-investigation in said case which provided under Section 173(8) of Cr.P.C. The police have no option to registered separate F.I.R. in respect of earlier P.S. case. Section 173(8) of Cr.P.C. is as follows:-

"Nothing in this section shall be deemed to preclude further investigation in respect of an offence after a report under sub-section (2) has been forwarded to the Magistrate and, where upon such investigation, the officer-in-charge of the police station



obtains further evidence, oral or documentary, he shall forward to the Magistrate a further report or reports regarding such evidence in the form prescribed; and the provisions of sub-sections (2) to (6) shall, as far as may be, apply in relation to such report or reports as they apply in relation to a report forwarded under sub-section (2)."

21. According to above provision, the police has power to further investigate in the same P.S. Case in which earlier chargesheet has been submitted u/s 173(2). In this matter a fresh case has been registered against the petitioner who is the informant of earlier case in which the police has submitted the chargesheet against the accused persons after completing the investigation. In P.S. Case No. 580 of 2019, the petitioner made an accused on the same fact which related the P.S. Case No. 571 of 2017 filed by this petitioner against the accused persons which is not proper and permissible in the eye of law. Police has no right of fresh investigation or re-investigation.

22. While it is true that this Court needs to



exercise its extraordinary writ jurisdiction to quash the First information Report with all circumspection and care. In the present case, this Court is of the considered opinion that in the instant P.S. Case (ie. 580 of 2019) which was registered against the petitioner for the same fact relating to P.S. Case No. 571 of 2017 which was registered by the petitioner. In earlier case which was filed by the petitioner, after completing the investigation, chargesheet has been submitted on the basis of consistent evidence which was found by the then investigating officer, during the investigation. Accordingly, learned concerned Court took cognizance in that case which was filed by the petitioner.

23. This Court is, therefore, required to look into the development in law, particularly in the field of granting reliefs to the petitioner who is facing legal discomforts on the basis of mere vague and omnibus kind of allegations. There are uncontroverted material which may be relied upon safely in the light of the



judgment of Hon'ble Supreme Court in the case of Rajeev Thapar (Supra). This case would pass the test laid down in the said judgment.

24. In ultimate analysis, this Court is of the considered opinion that in the First Information Report the allegations against this petitioner is completely vague in nature and prosecution of the petitioner would only be an abuse of process of the Court. After considering all the facts, documentary proofs and rival submissions I am of this view that the F.I.R. registered against the petitioner is completely illegal and without jurisdiction. To save the petitioner from sheer harassment, the ends of justice requires that the First Information Report being Kotwali P.S. Case No. 580 of 2019 dated 30.06.2019 in so far as it relates to the petitioner is fit to be quashed.

25. Accordingly, this Court quashes the First Information Report as against this petitioner.



26. This Cr. Misc. application is allowed.

(Sunil Kumar Panwar, J)

Nirajkrs/-

AFR/NAFR	AFR
CAV DATE	11.07.2024
Uploading Date	26.07.2024
Transmission Date	26.07.2024

