

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.16049 of 2023

Arising Out of PS. Case No.-144 Year-2022 Thana- MAHILA P.S. District- Patna

1. SHIVENDRA KUMAR MISHRA @ SHIVENDRA MISHRA Son of Harendra Kumar Mishra @ Harendra Mishra R/o Shashtri Nagar Laluchak Angari, P.S- Lodipur P.S- Lodipur Dist- Bhagalpur
2. Pushpa Devi Wife of Harendra Kumar Mishra @ Harendra Mishra R/o Shashtri Nagar Laluchak Angari, P.S- Lodipur P.S- Lodipur Dist- Bhagalpur
3. Satyendra Kr. Mishra Son of Harendra Kumar Mishra @ Harnedra Mishra R/o Shashtri Nagar Laluchak Angari, P.S- Lodipur P.S- Lodipur Dist- Bhagalpur
4. Harendra Kumar Mishra @ Harendra Son of Late Prahlad Mishra R/o Shashtri Nagar Laluchak Angari, P.S- Lodipur P.S- Lodipur Dist- Bhagalpur
5. Priyanka Pallavi Wife of Satyendra Kumar Mishra R/o Shashtri Nagar Laluchak Angari, P.S- Lodipur P.S- Lodipur Dist- Bhagalpur

... .. Petitioner/s

Versus

1. The State of Bihar Bihar
2. Swati Kumari Wife of Shivendra Kumar Mishra, D/o Niraj Kr. Mishra At present R/o at Officer Awas, Police Line, Lodhipur, PS- Budha Colony, Dist- Patna

... .. Opposite Party/s

with

Criminal Writ Jurisdiction Case No. 1240 of 2022

Arising Out of PS. Case No.-417 Year-2022 Thana- BUDDHACOLONY District- Patna

SHIVENDRA KUMAR MISHRA @ SHIVENDRA MISHRA S/O SRI HARENDRA KUMAR MISHRA PRESENTLY RESIDES AT NOIDA, POWER COMPANY LIMITED, KNOWLEDGE PARK-IV, GREATER NOIDA, P.S.- SURAJPUR, DIST- GAUTAMBUDDHNAGAR UTTAR PRADESH, PERMANENTLY RESIDENT OF NEAR MAZAAR, SHASTRI NAGAR, LALUCHAK AUNGARI, P.S.-ISHAKCHAK, DIST- BHAGALPUR (BIHAR)

... .. Petitioner/s

Versus

1. THE STATE OF BIHAR THROUGH CHIEF SECRETARY, GOVT. OF BIHAR, PATNA PATNA BIHAR
2. THE DIRECTOR GENERAL OF POLICE, BIHAR, PATNA PATNA BIHAR
3. THE INSPECTOR GENERAL OF POLICE, PATNA PATNA BIHAR



4. THE SENIOR SUPERINTENDENT OF POLICE, PATNA PATNA BIHAR
5. THE DY. S.P. TOWN, PATNA PATNA BIHAR
6. THE STATION HOUSE OFFICER, BUDDHA COLONY P.S. PATNA PATNA BIHAR
7. SMT. ANITA MISHRA W/O NIRAJ KUMAR MISHRA RESIDENT OF OFFICERS QUARTER, NEW POLICE LINE POST- BUDHA COLONY, DISTRICT- PATNA

... .. Respondent/s

Appearance :

(In CRIMINAL MISCELLANEOUS No. 16049 of 2023)

For the Petitioner/s : Mr.Dhananjay Kumar Pandey

For the Opposite Party/s : Mr.Nawal Kishore Prasad

(In Criminal Writ Jurisdiction Case No. 1240 of 2022)

For the Petitioner/s : Mr. Dhananjay Kumar Pandey

Mr. Ashok Kumar Singh

For the Opposite Party/s : Mr. Shiv Shankar Prasad

For the O.P. No. 02 : Mr. Prakash Kr.

Ms. Renu Jha

CORAM: HONOURABLE MR. JUSTICE SANDEEP KUMAR
ORAL ORDER

14 06-09-2024

Re:- Cr. Misc. No. 16049 of 2023.

Heard the parties including learned Senior Counsel
for the petitioners Shri P.N. Shahi.

2. List this case on the next appointed date.

Re:- Cr.W.J.C. No. 1240 of 2022.

Heard learned counsel for the petitioners, learned
counsel for the opposite party and learned counsel for the State.

**2. This application has been filed on behalf of the
petitioner for quashing the FIR bearing Buddha Colony P.S.
Case No. 417 of 2022 registered for the offence under Sections
406, 420 and 120B of the Indian Penal Code.**

3. As per the FIR, the family of the informant came in



contact with the accused persons who were doing the business of purchase and sale of land. It is alleged that in the year 2019-20 one close friend of the husband of the namely Sanjiv Tiwari gave Rs. 10 lakhs to the accused persons for purchasing a piece of land. The husband of the informant also gave Rs. 16 lakhs for purchasing a piece of land and similarly one Dharmendra Kumar also gave Rs. 30 lakhs to the informant to purchase a plot in NCR, Delhi. It has also been alleged that when the informant's husband asked the accused persons to execute the sale deed, they took time and ultimately, they stopped to receive the call of the informant's husband. It has also been alleged that since the accused persons have not executed the sale deed, Dharmendra Singh demanded the amount which he had given to the accused persons as the accused persons are related to the informant's family. Accordingly, the present FIR has been lodged by the informant against the accused persons for cheating the informant and other persons after hatching conspiracy.

4. The argument of the petitioner is that the present FIR is a false FIR and the same has been filed because of the matrimonial dispute and therefore, it may be quashed.

5. Learned counsel for the opposite party no. 02 has



filed counter affidavit and he submits that all the transactions have been made much before the matrimonial dispute arose.

6. The contention of the petitioner before this Court is basically that the FIR may be quashed considering his defence but the Hon'ble Supreme Court in the case ***Neeharika Infrastructure Pvt. Ltd v. State of Maharashtra & Others;*** reported in ***(2021) 19 SCC 401*** has laid down the guidelines for quashing of the FIR. Paragraph no.33 of the aforesaid judgment reads as follows:-

“33. In view of the above and for the reasons stated above, our final conclusions on the principal/core issue, whether the High Court would be justified in passing an interim order of stay of investigation and/or "no coercive steps to be adopted", during the pendency of the quashing petition under Section 482 Cr.P.C and/or under Article 226 of the Constitution of India and in what circumstances and whether the High Court would be justified in passing the order of not to arrest the accused or “no coercive steps to be adopted” during the investigation or till the final report/charge-sheet is filed under Section 173 Cr.P.C., while dismissing/disposing of/not entertaining/ not quashing the criminal proceedings/complaint/FIR in exercise of powers under Section 482 Cr.P.C. and / or under Article 226 of the Constitution of India, our final conclusions are as under:-

(33.1) 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 a cognizable offence.

(33.2) Courts would not thwart any investigation into the cognizable offences.

(33.3) It is only in cases where no cognizable offence or offence of any kind is disclosed in the first information report that the Court will not permit an investigation to go on.

(33.4) The power of quashing should be exercised sparingly with circumspection, as it has been observed, in the 'rarest of rare cases (not to be confused with the formation in the context of death penalty).

(33.5) 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.

(33.6) Criminal proceedings ought not to be scuttled at the initial stage.

(33.7) Quashing of a complaint/FIR should be an exception rather than an ordinary rule.

(33.8) 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 and one ought not to tread over the other sphere.



- (33.9) *The functions of the judiciary and the police are complementary, not overlapping.*
- (33.10) *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.*
- (33.11) *Extraordinary and inherent powers of the Court do not confer an arbitrary jurisdiction on the Court to act according to its whims or caprice.*
- (33.12) *The first information report is not an encyclopedia 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. 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.*



(33.13) *The power under Section 482 Cr.P.C. is very wide, but conferment of wide power requires the court to be more cautious. It casts an onerous and more diligent duty on the court.*

(33.14) *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.*

(33.15) *When a prayer for quashing the FIR is made by the alleged accused and the court when it exercises the power under Section 482 Cr.P.C., only has to consider whether the allegations in the FIR disclose commission of a cognizable offence or not. The court is not required to consider on merits whether or not the merits of the allegations make out a cognizable offence and the court has to permit the investigating agency/police to investigate the allegations in the FIR.*

(33.16) *The aforesaid parameters would be applicable and/or the aforesaid aspects are required to be considered by the High Court while passing an interim order in a quashing petition in exercise of powers under Section 482 Cr.P.C. and/or under Article 226 of the Constitution of India.*



However, an interim order of stay of Investigation during the pendency of the quashing petition can be passed with circumspection. Such an interim order should not require to be passed routinely, casually and/or mechanically. Normally, when the investigation is in progress and the facts are hazy and the entire evidence/material is not before the High Court, the High Court should restrain itself from passing the interim order of not to arrest or "no coercive steps to be adopted" and the accused should be relegated to apply for anticipatory bail under Section 438 Cr.P.C. before the competent court. The High Court shall not and as such is not justified in passing the order of not to arrest and/or "no coercive steps" either during the Investigation or till the investigation is completed and/or till the final report/chargesheet is filed under Section 173 Cr.P.C, while dismissing/disposing of the quashing petition under Section 482 Cr.P.C. and/or under Article 226 of the Constitution of India.

(33.17) Even in a case where the High Court is prima facie of the opinion that an exceptional case is made out for grant of interim stay of further investigation, after considering the broad parameters while exercising the powers under Section 482



Cr.P.C. and/or under Article 226 of the Constitution of India referred to hereinabove, the High Court has to give brief reasons why such an interim order is warranted and/or is required to be passed so that it can demonstrate the application of mind by the Court and the higher forum can consider what was weighed with the High Court while passing such an interim order.

(33.18) Whenever an interim order is passed by the High Court of "no coercive steps to be adopted" within the aforesaid parameters, the High Court must clarify what does it mean by "no coercive steps to be adopted" as the term "no coercive steps to be adopted" can be said to be too vague and/or broad which can be misunderstood and/or misapplied."

7. The Hon'ble Supreme Court in the case of ***State of Haryana & Ors. Versus Bhajan Lal & Ors.*** reported in ***AIR 1992 SC 604***, has enumerated the categories under which the quashing application may be allowed. It will be relevant to quote paragraph no.102 of the aforesaid decision which reads as under:

"102. In the backdrop of the interpretation of the various relevant provisions of the Code under



Chapter 14 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 channelized and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such a power should be exercised.

(1) Where the allegations made in the first information report or the complaint, even if they are taken at the 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 F.I.R. 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.”

8. From the reading of the FIR, offences are made out against the petitioner and this Court will not quash the FIR considering the defence of the petitioner.

9. In my view, after registration of the FIR, investigation is going on and if the defence of the petitioner is found to be plausible by the investigating officer then the petitioner will not be charge-sheeted.

10. Considering the facts of the case and also



considering the law laid down by the Hon'ble Supreme Court in the case of *State of Haryana & Ors. Versus Bhajan Lal & Ors. (Supra)* and in the case of *Neeharika Infrastructure Pvt. Ltd v. State of Maharashtra & Others (Supra)* ,the FIR cannot be nipped at the bud i.e. it cannot be quashed at the initial stage.

11. Accordingly, this application is dismissed.

12. Interim protection granted to the petitioner vide order dated 28.04.2023 passed in Cr. Misc. No. 19380 of 2023 is hereby vacated.

13. The petitioner is directed to co-operate in the investigation and participate in the investigation by joining the same.

(Sandeep Kumar, J)

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