

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.34261 of 2016

Arising Out of PS. Case No.-1736 Year-2015 Thana- SARAN COMPLAINT CASE District-
Saran

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Chhathi Lal Rai son of Ramdas Rai residence of village - Sherpurganj, Police
Station - Chapra Muffasil, District - Saran at Chapra.

... .. Petitioner/s

Versus

1. The State of Bihar.
2. Baijanti Devi wife of Satya Narain Sah Resident of Village - Sherpurganj,
Police Station - Chapra Muffasil, District - Saran at Chapra.

... .. Opposite Party/s

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Appearance :

For the Petitioner/s : Mr.Shambhu Prasad Yadav, Advocate
For the Opposite Party/s : Mr. Binod Kumar, APP

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CORAM: HONOURABLE MR. JUSTICE CHANDRA SHEKHAR JHA
ORAL JUDGMENT

Date : 04-04-2024

1. The present application has been filed for quashing the order dated 08.06.2016 passed by learned Sessions Judge, Saran at Chapra, in Criminal Revision No. 324/2015 as well as order dated 02.11.2015 passed by learned Judicial Magistrate, Chapra, in Tr. No. 1654/2015/Tr. No. 1484/2016 (arising out of Complaint Case No. 1736/2015), where cognizance was taken for the offences under sections 323, 504, 506/149 of the



Indian Penal Code,

2. Prosecution case in brief is that one Baijanti Devi wife of Satya Narain Sah Resident of Village – Sherpurganj, Police station - Chapra Mufasil, District Saran at Chapra had filed a complaint case before the learned Chief Judicial Magistrate Saran, Chapra i.e. Complaint case no. 1736/2015 for offences under sections 323, 504, 506/149 of the Indian penal code against the 12 persons including petitioner. It is alleged that her mother-in-law has executed a sale deed regarding six dhur of land in favour of the petitioner, namely, Chhathi lal but accused persons intended to take possession over the more land as in actual it was executed through sale deed. The Complainant on 16-06-2015 at about 4 p. m. in the evening, was sitting on her door along with her husband, when the accused persons forcibly wanted to tie their cattle on the encroached land and on protest, the petitioner Chhathi Lal abused the complainant in filthy language. He caught her hair,



torned her blouse and assaulted with fists and feet, where, she became naked during occurrence. When her husband came for her rescue, Chhthi Lal Rai, Jugdish Rai and Jaleshwer Rai assaulted and caused injury on his hand and leg with bricks and lathi. The accused persons also damaged the house of complainant, causing loss of about Rs. 20,000/-. The accused persons entered into the house breaking open the door and took away utensils etc. worth Rs. 5000/-. The accused Tarkeshwar Rai threatened to set fire to the house and to kill her sons Ravi and Chandan, who live in Delhi.

3. In the background of aforesaid factual allegation, the learned Jurisdictional Magistrate took cognizance for the offences under Sections 323, 504, 506/149 of the Indian Penal Code (in short 'IPC').

4. It is submitted by learned counsel appearing for the petitioner that out of civil dispute, present criminal case was filed by opposite party no. 2. It is pointed out that prior to present complaint case, another



complaint case was filed by opposite party no. 2, almost with same facts and allegations, which was registered as complaint case no. 146 of 2015 on 20.01.2015, whereupon, a direction was given under Sections 156(3) of the Cr.P.C. to police to lodge FIR and investigate the matter. Subsequently, Muffasil P.S. Case No. 107/2015 was registered, whereafter, completion of investigation, charge sheet no. 216/2015 was submitted on 31.08.2015 by exonerating petitioner, as case found false during investigation. It is submitted that out of ulterior and oblique motive, again on 18.06.2015, the present complaint case no. 1736/2015 was filed. It is submitted that selling of land by mother-in-law of opposite party no. 2 to petitioner is an admitted position, where just to disturb the possession, complainant being daughter-in-law repeatedly lodged two false complaint cases. It is submitted that as the civil dispute giving colour of criminal cases, therefore, present proceeding is fit to be quashed and set aside.



5. In support of his submission, learned counsel relied upon the legal report of the Hon'ble Supreme Court as reported in the matter of ***Usha Chakraborty and Another vs. State of West Bengal and Another*** reported in ***2023 SCC OnLine SC 90***.

6. Despite of service of notice, opposite party no. 2 failed to join the present proceeding.

7. It would be apposite to re-produce relevant Paragraph Nos. 6, 7, 8, 9 and 10 of ***Usha Chakraborty case (supra)***, which reads as under:-

8. 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.

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 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.”



9. In view of aforesaid factual and legal submission and by taking note of fact, as out of land dispute, where admittedly, land in issue already sold by mother-in-law of opposite party no. 2 to petitioner, for which, a police case was also lodged on earlier point of time, which after investigation, found false and subsequently, thereafter, the present complaint case was registered, suggesting *prima facie*, ulterior and oblique motive to implicate petitioner falsely in criminal case. Accordingly, by taking guiding note of ***Usha Chakraborty's case (supra)***, where the ratio as laid down in ***State of Haryana and Ors. Vs. Bhajan Lal and Ors.***, reported in ***1992 Supp (1) Supreme Court Cases 335*** was also relied upon, the impugned order dated 08.06.2016 passed by learned Sessions Judge, Saran at Chapra, in Criminal Revision No. 324/2015 as well as order dated 02.11.2015 taking cognizance passed by learned Judicial Magistrate, Chapra, are hereby set aside and quashed *qua* petitioner with all its



consequential proceedings.

10. Let copy of this order be sent to the trial court, without delay.

(Chandra Shekhar Jha, J)

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AFR/NAFR	NAFR
CAV DATE	NA
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