

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.1258 of 2022

Arising Out of PS. Case No.-304 Year-2020 Thana- BHAGALPUR KOTWALI District-
Bhagalpur

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RAM KISHORE CHOUDHARY S/o- Late Lakhan Lal Choudhary R/o- 94-
Red Cross Road, Adampur, Bhagalpur, P.S. - Adampur, District - Bhagalpur.

... .. Petitioner/s

Versus

1. The State of Bihar
2. Abhay Kishor Choudhary S/o Late Lakhan Lal Choudhary Vill. Hanuman
Nagar, P.O. Jagsar (Kothali) District- Bhagalpur

... .. Opposite Party/s

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Appearance :

For the Petitioner/s	:	Mr. Awadhesh Kumar, Advocate
For the Opposite Party/s	:	Mr. Pramod Kumar Pandey, APP
For the Opposite Party no.2	:	None

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CORAM: HONOURABLE MR. JUSTICE PARTHA SARTHY
ORAL JUDGMENT

Date : 27-06-2024

1. Heard learned counsel for the petitioner and learned
counsel for the State of Bihar. No one appears on behalf of the
opposite party no.2 inspite of valid service of notice.

2. The petitioner in the instant application has prayed
for quashing the order dated 3.10.2020 passed in Kotwali
(Jogsar) P.S Case no. 304 of 2020 whereby the learned Chief
Judicial Magistrate, Bhagalpur was pleased to take cognizance
for the offence under sections 341, 323, 379 and 506 of the
Indian Penal Code.

3. As per the prosecution case based on the written
statement of the informant-opposite party no.2, it is stated that
his elder brother (petitioner herein) constructed a room on the



disputed land and gave the same on rent to the informant for running a shop after taking an advance of Rs. 2 lakhs and on monthly rent of Rs. 6,000/-. The informant states that he is running a photostat machine in the same and is paying rent at the rate of Rs. 6,000/- per month. He further states that he was unable to pay the rent for three months because of lockdown. On 4.6.2020 at 8:30 am, the informant states that while he had opened his shop and was cleaning the same, his elder brother came and told him that he had not paid the rent and was opening his shop. He told his brother that he be permitted to open the shop and he would pay the rent slowly. On this it is stated by the informant that the petitioner became enraged, he started to abuse and forcibly snatched Rs. 5500/- which was kept in the shop for purchasing articles. The informant further states that the petitioner threatened that the informant should first pay the rent for three months and only thereafter should he open his shop or else he will send him to jail.

4. On the basis of the statement of the informant, the FIR being Kotwali (Jogsar) P.S. Case no. 304 of 2020 was registered on 5.6.2020 under sections 341, 323, 379 and 506 of the Indian Penal Code.

5. Learned counsel for the petitioner submits that as



would be evident from the contents of the FIR itself, the petitioner happens to be the elder brother of the informant and a trivial family dispute relating to property has been blown out of proportion. The story made up by the informant of the petitioner having constructed a room on a disputed land and having given the same on rent as stated in the FIR are all false and concocted. The said shop belongs to the petitioner himself and the informant has been working in the same on behalf of the petitioner. The petitioner has been paying commission to the informant based on the number of pages photocopied. It is submitted that contrary to the claim, the informant did not produce any agreement between him and the petitioner. Filing of the instant case arising out of family dispute, as narrated in the FIR is an abuse of the process of Court. Accepting the allegations levelled in the FIR and the material that has transpired in course of investigation, no offence is made out against the petitioner. It is because of these reasons and the false and the frivolous allegations levelled by the informant in the malicious FIR that inspite of valid service of notice the informant did not appear in the instant case as would be evident from the orders dated 25.4.2024, 6.5.2024 and again 24.6.2024. It is thus submitted that the order taking cognizance dated



3.10.2020 impugned herein is not sustainable and fit to be set aside.

6. The application is opposed by learned APP for the State.

7. Heard learned counsel for the parties.

8. On perusal of the material on record, specially the contents of the FIR it transpires that the dispute is between full brothers. The informant- opposite party no.2, the petitioner as also one of the witness to the FIR are all full brothers. While the case of the informant on one hand is that he had taken the room on rent from his full brother and was paying rent at the rate of Rs. 6,000 per month, besides having given an advance of Rs. 2 lakhs, it is his case that he could not pay the rent for a period of three months on account of lockdown. While in the FIR, he alleges that he told his elder brother ie the petitioner that he would pay the arrears of rent slowly, the petitioner started to abuse him, took away Rs. 5500/- from his pocket and went away giving threats.

9. In course of investigation, this Court finds that the allegations levelled by the informant in the FIR have been further improved upon by another witness who also happens to be the full brother of the informant and petitioner when he states



that the petitioner also slapped the informant, though the same is not the case of the informant either in his FIR or in his further statement.

10. On the other hand, the case of the petitioner is that the shop belongs to the petitioner and he is running the same himself in the name and style of M/s Choudhary Enterprises. So far as the informant is concerned, he only assists him in the process of photo copying and is paid on commission basis.

11. It further transpires from perusal of the records that after investigation charge-sheet was submitted under sections 341, 323, 379 and 506 of the Indian Penal Code and thereafter cognizance was taken under the said sections by the order impugned dated 3.10.2020.

12. The Hon'ble Supreme Court, in the case of **Indian Oil Corporation vs. NEPC India Limited & Ors.**; [(2006) 6 SCC 736] has taken note of the growing tendency to convert purely civil disputes into criminal cases. The relevant portion of the judgment is quoted herein below for ready reference :-

“13. While on this issue, it is necessary to take notice of a growing tendency in business circles to convert purely civil disputes into criminal cases. This is obviously on account of a prevalent impression that civil law remedies are time



consuming and do not adequately protect the interests of lenders/creditors. Such a tendency is seen in several family disputes also, leading to irretrievable breakdown of marriages/families. There is also an impression that if a person could somehow be entangled in a criminal prosecution, there is a likelihood of imminent settlement. Any effort to settle civil disputes and claims, which do not involve any criminal offence, by applying pressure through criminal prosecution should be deprecated and discouraged. In G. Sagar Suri v. State of U.P. [(2000) 2 SCC 636 : 2000 SCC (Cri) 513] this Court observed: (SCC p. 643, para 8)

“It is to be seen if a matter, which is essentially of a civil nature, has been given a cloak of criminal offence. Criminal proceedings are not a short cut of other remedies available in law. Before issuing process a criminal court has to exercise a great deal of caution. For the accused it is a serious matter. This Court has laid certain principles on the basis of which the High Court is to exercise its jurisdiction under Section 482 of the Code. Jurisdiction under this section has to be exercised to prevent abuse of the process of any court or otherwise to secure the ends of justice.”

13. Having heard learned counsel for the parties and having perused the material on record, taking into consideration the contents of the FIR and the material that has transpired in



course of investigation in the case diary, this Court is of the opinion that the dispute between the parties who are full brothers are a purely family/business dispute. The continuation of the criminal case would be an abuse of the process of the Court.

14. The Court finds merit in the instant application. The order dated 3.10.2020 passed in Kotwali (Jogsar) P.S Case no. 304 of 2020 by the learned Chief Judicial Magistrate, Bhagalpur taking cognizance under sections 341, 323, 379 and 506 of the Indian Penal Code is not sustainable and is hereby quashed.

15. This application is allowed.

(Partha Sarthy, J)

Shiv/-

AFR/NAFR	
CAV DATE	
Uploading Date	27.06.2024.
Transmission Date	

