

IN THE HIGH COURT OF JUDICATURE AT PATNA

CRIMINAL MISCELLANEOUS No.35133 of 2021

Arising Out of PS. Case No.- Year-0 Thana- District- Purnia

PRAVIN KUMAR JHA Son of Late Baldeo Jha Resident of Mohalla Sipahi
Tola, Chunapur Road, P.S. K.Hat (Top Madhubani), Purnea, District - Purnea.

... .. Petitioner/s

Versus

1. THE STATE OF BIHAR
2. Ajay Kumar Singh Son of Shree Fuleshwar Singh Resident of Village -
Paigparh, P.S. Bhargama District Araria at Present residing at Mohalla
Keshav Nagar, Chunapur Road, P.S. K.Hat District Purnea.

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr.Giridhar Gopal Tiwary
For the Opposite Party/s : Mr. Jharkhandi Upadhyay

CORAM: HONOURABLE MR. JUSTICE SANDEEP KUMAR

ORAL ORDER

5 21-03-2025 Heard the learned counsel for the petitioner, the

learned counsel appearing on behalf of the State as well as the

learned counsel for the opposite party No. 2.

2. The present application under section 482 of the
Code of Criminal Procedure is preferred for quashing the order
dated 21.9.2019 passed by the A.C.J.M - I, Purnea in complaint
case bearing C.A. No. 838 of 2016 whereby the Court has taken
cognizance under sections 427, 323, 504, 385 read with section
34 of the Indian Penal Code against the petitioner and his
daughter, who is a Non-resident Indian (NRI) and subsequently
the Court had issued summons.

3. The present case emanates from a complaint
petition dated 10.05.2016 (Annexure P-4), preferred by the
opposite party no. 2 / Complainant, filed before the Court of



C.J.M, Purnea. In the aforesaid complaint it is alleged that the Complainant came into possession of a plot admeasuring 1 *katha* 10 *dhurs* of land vide sale deed no. 2893, dated 15.02.2012 from one Swarna Lata Devi. The aforesaid land was purchased in the name of the wife of the Complainant. It is further stated in the complaint petition that subsequent to the purchase, the mutation was carried in favour of the wife of the complainant and thereafter two rooms with asbestos roof were constructed and the son of the complainant who is a student was living thereon since the complainant and his wife were residing in Delhi where the Complainant was working as a private guard. It was further alleged that the present petitioner who has been arrayed as accused no.1 in the aforesaid complaint had misused his official position being an officer of the Bihar Administrative Service to initiate proceedings under section 144 Cr.P.C. in order to disturb the peaceful possession of the Complainant. It is thereafter stated that the aforesaid proceeding was challenged before the learned Sessions Court, Purnea invoking revisional jurisdiction, however it is further stated that since the statutory limitation had expired after lapse of two months therefore the challenge had become infructuous. Next it was submitted in the Complaint that the original owner of the property described at



paragraph-1 of the complaint was one Ramesh Bhagat, who had sold his property to multiple purchasers, and the complainant had also purchased the aforesaid plot of land from one such purchaser. Thereafter, it is stated that in the year 2013 a Mediation (*panchaiti*) was conducted to ascertain the correct measurement and status of the land, wherein the claim of the complainant was found correct and the land as claimed by the accused no.2 was found to be on the private way as demarcated by the original land owner. It is alleged that suddenly in the first week of May-2016 the two accused started to threaten the son of the complainant and started to take possession of the land by use of force. It is alleged that on the date of occurrence, the complainant along with his family members was in his house when suddenly the two accused persons along with 5-6 persons came to the house of the complainant and started to abuse and threaten the complainant. Upon resisting, it is alleged that the accused no. 1/petitioner ordered the accompanying persons to assault the complainant. It is thereafter alleged that when the wife of the complainant intervened to save the complainant, the accused no.2 pulled the hair of the wife of the complainant and abused and threatened her with dire consequences if they refused to vacate the land. It is thereafter stated that upon



hearing the commotion, people assembled. In the meanwhile, it is alleged that the accused no.1 entered the house of the complainant and started to throw the belongings, which was protested by the people who had assembled there. It is further alleged that the accused no.1/petitioner threatened the complainant to either vacate the said land in question or demanded rupees ten lakhs in lieu thereof. Thereafter it is stated that the complainant went to the jurisdictional police station along with his family, however the police refused to register the F.I.R. and therefore the complainant was constrained to prefer the present complaint.

4. The learned counsel for the petitioner submits that the entire prosecution story is false and fabricated. It is submitted that the complainant has impleaded the daughter of the instant petitioner namely Reena Kumari and has attributed overt act on her part on the date of occurrence i.e. in the first week of May 2016 as described in paragraph-7 and 8 of the complaint petition, dated 10.05.2016. However, it is submitted that the aforesaid Reena Kumari was not present in India during the aforesaid period since she was living in U.S.A.

5. The learned counsel for the petitioner has next submitted that there is a discrepancy with regard to the date of



occurrence itself, the date of occurrence mentioned on the first page of the complaint is 08.04.2016 at 5 P.M. whereas in paragraph-7 of the complaint the complainant categorically mentioned that in the first week of May 2016, the petitioner and his daughter committed the offence as alleged. None of the witnesses have stated anything regarding any incident in the first week of May 2016. It is also submitted by the learned counsel for the petitioner that the complainant had concealed the fact from the Court while filing the aforesaid complaint dated 10.05.2016 that he is an accused in the K. Hat P.S. case No. 36 of 2016 lodged by the present petitioner on 27.01.2016 under sections 447, 379, 384, 427, 120B, 506 read with section 34 of the I.P.C which pertained to the same plot on which the complainant is claiming his illegal possession. It was further highlighted that the complainant had filed his appearance in K. Hat P.S. Case No. 36 of 2016 on 10.05.2016, i.e., on the very date that the complainant preferred to lodge this present complaint, therefore it is submitted that the institution of the present complaint is nothing more than a counter blast of the case lodged against the complainant by the petitioner much prior in time.

6. It is thereafter submitted by the learned counsel for



the petitioner that all the witnesses of the alleged occurrence are interested parties and no independent witnesses have been examined. The witness No. 1 is the son of complainant, the witness no. 2 is the nephew (*bhanja*), the witness no. 3 is the brother-in-law (*sala*) and the witness no. 4 is the wife of the complainant. It is the submission of the counsel for the petitioner that the witnesses have only made stereotypical statement relating to the alleged occurrence. There are no independent witness even though the complainant has claimed that a number of persons had gathered and witnessed the occurrence before the accused persons left the place.

7. It is further submitted that the wife of the complainant has got no right, title or interest on the land purchased by the daughter of the petitioner and furthermore, the claim of the wife of the complainant on the basis of a subsequent sale deed executed by a third party who had purchased a portion of land in the same plot from the vendor of the petitioner does not confer her any claim over the land purchased by the daughter of this petitioner since, it is submitted that the boundary of the land mentioned on the sale deed executed by the wife of the complainant does not tally with the boundary of the land of the daughter of the petitioner. The



learned counsel for the petitioner had then proceeded to mention the boundary (*chauhaddi*) in the the sale deed of wife of the complainant wherein it is mentioned that the type of the land as 'residential private road' category with the boundary of her land as North - Anupam Chaubey, South - Ramesh Bhagat, East - Ramesh Bhagat and West - Private Road 10 feet. It is submitted that the boundary of the land of the daughter of this petitioner is North - Swarnlata Devi, South - Krishna Deo Pathak, East - Nityanand Singh and West - 10 feet wide private road.

8. The learned counsel for the Petitioner thereafter has submitted that the falsity of the complainant is further illustrated by his own statement in paragraph-3 of the complaint that he challenged the order passed in case No. 872M/2013 under 144 Cr. P.C. lodged by the petitioner in 2013 before the Court of District & Sessions Judge whereas it is submitted that the correct fact is that Cr. Revision No.483 of 13 was filed by a dummy of the complainant namely Krishna Kumar Singh which was dismissed by the learned Court.

9. Learned counsel for the petitioner has submitted that the correct factual position is that the land purchased by the daughter of the petitioner fell in the share of her vendor Ramesh Bhagat in partition dated 14.06.2006 among the brothers. The



land allotted to Ramesh Bhagat was mutated vide Mutation Case No.105/07-08 and thereafter *Jamabandi* No. 4019 was created in his name. it is further submitted that after verifying the right, title and possession of the vendor, the daughter of the petitioner purchased 4 *kathas* of land from the aforesaid Ramesh Bhagat vide sale deed dated 29.11.2010.

10. It is submitted that after purchase of the land the daughter of the petitioner came in peaceful possession of the aforesaid land and subsequently got the same mutated in her favour vide Mutation case No.7102/11-12 and a new *Jamabandi* bearing No. 6409 was created in her name.

11. Learned counsel appearing on behalf of the petitioner has further submitted that all of a sudden, in October of 2013 the complainant came to the plot belonging to the daughter of the petitioner along with some goons and labours and started to cut some of the bamboos standing on the plot of land claiming right over the land. It is further submitted that when this fact came to the knowledge of the family of the petitioner, the wife of the petitioner namely Punam Jha lodged a complaint before the S.D.M, Purnea for restraining the complainant from creating disturbance on the plot.

12. It is submitted that on the basis of the



aforementioned complaint filed by the wife of the petitioner, the S.D.M had ordered an enquiry by an Executive Magistrate who submitted his report on 24.10.2013 and on the basis of the aforesaid report the S.D.M, Purnea initiated proceeding under section 144 Cr. P.C. and issued notices to the parties. The petitioner appeared before the S.D.M, Purnea and filed his reply. Thereafter, it is submitted that, instead of contesting the matter before the S.D.M, the complainant in order to scuttle the order of the S.D.M filed a revision application through one Krishna Kumar Singh, who is, according to the petitioner, the henchman of the complainant/opposite party No. 2, which was subsequently dismissed vide order dated 17.01.2014.

13. It is next submitted that in the meanwhile the petitioner filed a petition before the S.D.M, Purnea for initiating proceeding under section 145 of Cr. P.C. for the declaration of possession of Reena Kumari over the plot in question which was registered as Case No. 406P of 2013 dated 26.10.2013 and was sent to P.S. - K. Hat for enquiry which appears to be pending till date. It is further submitted that when the petitioner heard that some conspiracy was being hatched to dispossess his daughter from a part of her land, the petitioner filed another petition before the S.D.M, Purnea for initiating section 145 proceeding



which was again numbered as 211P of 2015 which too, was sent for enquiry to the jurisdictional police on 20.8.2015 but even that appears to be still pending.

14. Learned counsel for the petitioner has next submitted that on 02.12.2015, the complainant/O.P. no.2 with the help of some anti-social elements committed trespass on the plot belonging to the daughter of the petitioner and also had cut down bamboo pieces, removed concrete pillars and constructed a brick wall and tin shade in the north west part of the plot in order to dispossess the daughter of the petitioner. It is further submitted that the petitioner could know about the incident only belatedly since nobody was ready to inform regarding the incident immediately and the petitioner was posted at Chapra at the time. Upon learning the same, the petitioner came to Purnea and filed a written report in the K. Hat Police Station on 27.01.2016 regarding the incident mentioning therein *inter alia* that his daughter is living in U.S.A. and he is the holder of the power of attorney. The Police registered a formal FIR bearing K. Hat P.S. case No. 36 of 2016 U/s 447, 379, 384, 427, 120(B), 506 read with section 34 of the I.P.C. against the accused Ajay Singh, O.P. no.2, the present complainant and also against Ramesh Bhagat.



15. The learned counsel has also submitted that the O.P. no. 02 was enlarged on anticipatory bail by this Court vide order dated 05.10.16 passed in Cr. Misc. No. 40923 of 2016 and had subsequently surrendered before the C.J.M, Purnea on 24.10.2016. It is submitted that the Police had submitted charge sheet and thereafter cognizance of offence was taken on 28.3.2017 under sections 447, 379, 384, 427, 506 of the I.P.C. and summons were issued. However since, the aforesaid Ajay Kumar Singh, instant O.P. no.2, who was accused therein, remained absent on 28.6.17, 30.8.17, 9.10.17 and 20.12.17, the Court below had issuedailable warrant of arrest against him, eventually the O.P. no.2 finally appeared on 21.3.2018. It is also submitted that since the O.P. no.2 subsequently again failed to appear, his bail bond was cancelled vide order dated 18.02.2019 and NBW was issued. On 19.03.19, the O.P.no.2 was granted conditional bail by the learned Court below.

16. Learned counsel for the petitioner submitted that the Magistrate had framed charge against the said Ajay Kumar Singh, O.P. no.2, vide order dated 28.03.2019 under sections 447, 379, 384, 427 read with section 506 of the I.P.C. and the trial had commenced but was delayed due to COVID-19 pandemic.



17. It is vehemently argued by the learned counsel for the petitioner that in order to create a defence, the Complainant/O.P. no.2 had concocted a fabricated and false story against the petitioner and his daughter who is a Non-resident Indian and preferred to file a complaint case before the Court of C.J.M., Purnea on 10.5.2016, which was the same date on which the complainant/O.P. no.2 filed his appearance in K. Hat P.S. Case No. 36 of 16. It is argued that the discrepancy regarding the date of occurrence as evidently mentioned on the first page of the complaint and at paragraph 7 and 8 of the complaint petition illustrate the concoction and false character of the complaint. It is further reiterated and emphasised by the learned counsel for the petitioner that no independent witnesses were produced and all the witnesses examined on behalf of the complainant, who are all the relatives of the complainant, have stated the date of occurrence as 08.04.2016 and none of them have even whispered about the alleged incident taking place in the first week of May 2016. Therefore, it is contended by the learned counsel for the petitioner that none of the witnesses could have been an eye witness to the occurrence and have therefore given false evidence for which they are liable to be prosecuted.

18. It is argued that the inability of the complainant to



even produce a single independent witness although the stand of the complainant is that a number of persons had gathered and witnessed the occurrence further casts serious doubts on the genuineness of the complaint. The learned counsel has also pointed that it took over 17 months for the Complainant to examine his witnesses, i.e., from 22.3.17 to 19.10.18 even when all the witnesses were his relatives.

19. The learned counsel for the petitioner has also pointed that the falsity and *malafide* nature of the present complaint petition is evident from the very fact that the daughter of the petitioner who has been arrayed as accused no.2 in the complaint petition was not even present in India on the alleged date of occurrence. It is submitted that Reena Kumari, the daughter of the petitioner had left India for U.S.A on 18.08.2012 and had returned on 1.6.2015; thereafter she again left India for U.S.A on 11.07.2015 and came to India on 19.11.15; again she left India for U.S.A on 01.12.2015 and came back to India only on 13.11.2017, that is after the alleged date of occurrence and had again left for USA on 03.12.2017 and since then she has been staying there continuously which, it is submitted, is evident from the perusal of the copy of the passport/ VISA of Reena Kumari in which entries are made upon entry and



departure. It is emphasised by the learned counsel for the petitioner that the entries on the passport are conclusive proof of the entry and exit of any Indian from the country. In the present case the action of the complainant in implicating the daughter of the petitioner vitiates and voids the entire prosecution case.

20. Learned counsel for the petitioner has further argued that the learned Additional Chief Judicial Magistrate failed to appreciate the contradiction in the averments/statements and the evidence of the witnesses and took cognizance of the offence as alleged and issued summons in a mechanical manner. The Magistrate ought not to have taken cognizance against the daughter of the petitioner who is not even residing in India. It is further argued that there is no evidence on record to show that the petitioner was present at the place of occurrence since he was posted at Chapra on the relevant date. It is lastly submitted that the petitioner had to face the rigors of criminal trial based on a false and concocted story. It is submitted that the petitioner appeared and was enlarged on bail by the learned A.C.J.M-I, Purnea vide order dated 05.06.20.

21. Learned counsel for the State and learned counsel for the opposite party No. 2 have supported the impugned order.

22. Mr. Ajit Kumar Singh, learned counsel for the



opposite party No. 2 has submitted that the co-accused Reena Kumari has been continuously entering and leaving the country multiple times and the accused was in fact present on the spot and had committed the occurrence as alleged in the complaint.

23. I have considered the submissions of the parties and perused the materials on record.

24. From the records it appears that on the alleged date of occurrence, the opposite party no. 2 was not present in the country and was in the United States.

25. The details of the case given by the complainant i.e. the date of occurrence is said to be in the 1st week of May, 2016 whereas the same has been given as 08.04.2016 on the first page of the complaint petition filed before the Court of C.J.M, Purnea. The present complaint which was filed on 10.05.2016 appears to be a counter blast case preferred by the complainant in retaliation to the K. Haat P.S. Case 36 of 2016 dated 27.01.2016 lodged by the petitioner against the complainant. There is admittedly an ongoing land dispute case between the parties which is the nucleus of the entire case.

26. The present complaint case appears to be a *malafide* prosecution instituted because of the ensuing land dispute between the parties.



27. The order taking cognizance is also cryptic and non-speaking.

28. The Hon'ble Supreme Court in the case of ***Pepsi Foods Ltd. v. Special Judicial Magistrate*** reported in (1998) 5 SCC 749, has held as follows:-

“Summoning of an accused in a criminal case is a serious matter. Criminal law cannot be set into motion as a matter of course. It is not that the complainant has to bring only two witnesses to support his allegations in the complaint to have the criminal law set into motion. The order of the Magistrate summoning the accused must reflect that he has applied his mind to the facts of the case and the law applicable thereto. He has to examine the nature of allegations made in the complaint and the evidence both oral and documentary in support thereof and would that be sufficient for the complainant to succeed in bringing charge on to the accused. It is not that the Magistrate is a silent spectator at the time of recording of preliminary evidence before summoning of the accused. The Magistrate has to carefully scrutinize the evidence brought on record and may even himself put questions to the complainant and his witnesses to elicit answers to find out the truthfulness of the allegations or otherwise and then examine if any offence is prima facie committed by all or any of the accused.”

29. The Hon'ble Supreme Court in the case of ***Delhi Race Club (1940) Ltd. v. State of U.P.*** reported in (2024) 10 SCC 690 has held as under:

“30. The aforesaid aspect could be said to have been completely lost sight of by the High Court, while rejecting the application filed by the appellant herein under Section 482CrPC, seeking quashing of the summoning



order.

31. In *Mehmood Ul Rehman v. Khazir Mohammad Tunda* [*Mehmood Ul Rehman v. Khazir Mohammad Tunda*, (2015) 12 SCC 420 : (2016) 1 SCC (Cri) 124], this Court held thus : (SCC p. 430, para 22)

“22. ... The satisfaction on the ground for proceeding would mean that the facts alleged in the complaint would constitute an offence, and when considered along with the statements recorded, would, *prima facie*, make the accused answerable before the court. ... In other words, the Magistrate is not to act as a post office in taking cognizance of each and every complaint filed before him and issue process as a matter of course. There must be sufficient indication in the order passed by the Magistrate that he is satisfied that the allegations in the complaint constitute an offence and when considered along with the statements recorded and the result of inquiry or report of investigation under Section 202 CrPC, if any, the accused is answerable before the criminal court, there is ground for proceeding against the accused under Section 204 CrPC, by issuing process for appearance. Application of mind is best demonstrated by disclosure of mind on the satisfaction. ... To be called to appear before the criminal court as an accused is serious matter affecting one's dignity, self-respect and image in society. Hence, the process of criminal court shall not be made a weapon of harassment.” (emphasis supplied)



32. The principle of law discernible from the aforesaid decision is that issuance of summons is a serious matter and, therefore, should not be done mechanically and it should be done only upon satisfaction on the ground for proceeding further in the matter against a person concerned based on the materials collected during the inquiry.

30. The Hon'ble Supreme Court in the case of ***A.M. Mohan v. The State Represented by SHO and Another*** reported as ***[2024] 3 S.C.R. 722 = 2024 SCC OnLine SC 339*** has succinctly laid down the principles for exercise of inherent powers under section 482 Cr.P.C as follows –

“9. The law with regard to exercise of jurisdiction under Section 482 of Cr. P.C. to quash complaints and criminal proceedings has been succinctly summarized by this Court in the case of Indian Oil Corporation v. NEPC India Limited (2006) Suppl. 3 SCR 704, after considering the earlier precedents. It will be apposite to refer to the following observations of this Court in the said case, which read thus:

“12. The principles relating to exercise of jurisdiction under Section 482 of the Code of Criminal Procedure to quash complaints and criminal proceedings have been stated and reiterated by this Court in several decisions. To mention a few —Madhavrao Jiwajirao Scindia v. Sambhajirao Chandrojirao Angre [(1988) 1 SCC 692 : 1988 SCC (Cri) 234], State of Haryana v. Bhajan Lal [1992 Supp (1) SCC 335 : 1992 SCC (Cri) 426], Rupan Deol Bajaj v. Kanwar Pal Singh Gill [(1995) 6 SCC 194 : 1995 SCC (Cri) 1059], Central Bureau of Investigation v. Duncans Agro Industries Ltd. [(1996) 5 SCC 591 : 1996 SCC (Cri) 1045], State of Bihar v. Rajendra Agrawalla [(1996) 8 SCC 164 : 1996 SCC (Cri) 628], Rajesh Bajaj v. State NCT of Delhi [(1999) 3 SCC 259 : 1999 SCC (Cri) 401], Medchl Chemicals & Pharma (P) Ltd. v. Biological E. Ltd. [(2000) 3 SCC 269 : 2000 SCC (Cri) 615], Hridaya Ranjan Prasad Verma v. State



of Bihar [(2000) 4 SCC 168 : 2000 SCC (Cri) 786], M. Krishnan v. Vijay Singh [(2001) 8 SCC 645 : 2002 SCC (Cri) 19] and Zandu Pharmaceutical Works Ltd. v. Mohd. Sharaful Haque [(2005) 1 SCC 122 : 2005 SCC (Cri) 283]. The principles, relevant to our purpose are:

1. A complaint can be quashed where the allegations made in 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 the case alleged against the accused. For this purpose, the complaint has to be examined as a whole, but without examining the merits of the allegations. Neither a detailed inquiry nor a meticulous analysis of the material nor an assessment of the reliability or genuineness of the allegations in the complaint, is warranted while examining prayer for quashing of a complaint

2. A complaint may also be quashed where it is a clear abuse of the process of the court, as when the criminal proceeding is found to have been initiated with mala fides/malice for wreaking vengeance or to cause harm, or where the allegations are absurd and inherently improbable.

3. The power to quash shall not, however, be used to stifle or scuttle a legitimate prosecution. The power should be used sparingly and with abundant caution.

4. The complaint is not required to verbatim reproduce the legal ingredients of the offence alleged. If the necessary factual foundation is laid in the complaint, merely on the ground that a few ingredients have not been stated in detail, the proceedings should not be quashed. Quashing of the complaint is warranted only where the complaint is so bereft of even the basic facts which are absolutely necessary for making out the offence.

5. A given set of facts may make out : (a) purely a civil wrong; or (b) purely a criminal offence; or (c) a civil wrong as also a criminal offence. A commercial transaction or a contractual dispute, apart from furnishing a cause of action for seeking remedy in civil law, may also involve a criminal offence. As the nature and scope of a civil proceeding are different from a criminal proceeding, the mere fact that the



complaint relates to a commercial transaction or breach of contract, for which a civil remedy is available or has been availed, is not by itself a ground to quash the criminal proceedings. The test is whether the allegations in the complaint disclose a criminal offence or not.”

31. The Magistrate without application of judicial mind has mechanically taken cognizance and issued process against the accused persons in a false and fabricated case instituted in the backdrop of an ongoing land dispute between the parties. The complaint is preferred as a counterblast in order to wreak vengeance in retaliation to the earlier criminal case instituted by the petitioner wherein the daughter who is a non-resident Indian was arrayed as an accused when she was not in the Country much less at the place of occurrence.

32. Therefore, in view of the discussions above and in view of the law laid down by the Hon'ble Supreme Court in the *Pepsi Foods Ltd. (supra)*, *Delhi Race Club (1940) Ltd. (supra)*, the impugned order is unsustainable for its cryptic and mechanical character. In view of the law laid down in *A. M. Mohan (Supra)* for exercise of inherent powers of this Court under section 482 Cr.P.C., since the present prosecution appears to be *mala fide* therefore the present prosecution could not be sustained and is therefore for the foregoing reasons, unsustainable. This application is allowed.



33. Accordingly, the impugned order taking cognizance dated 21.09.2019 passed by the A.C.J.M.-I, Purnea in C.A. No. 838 of 2016 is hereby quashed and set aside along with the entire complaint case C.A. 838 of 2016 against both the accused persons therein.

(Sandeep Kumar, J)

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