

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.48279 of 2024

Arising Out of PS. Case No.-3578 Year-2012 Thana- PURNIA COMPLAINT CASE District-
Purnia

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Ashok Kumar Singh Son of Late Chiteshwar Prasad Singh Resident of
Mohallah - New Sipahi Tola, P.S.- K. Hat, District - Purnea

... .. Petitioner

Versus

1. The State of Bihar
2. Rana Pratap Singh Son of Late Chhedi Prasad Singh Resident of
village - Dumara, P.S.- Bhawanipur, District - Purnea

... .. Opposite Party

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Appearance :

For the Petitioner/s : Mr.Amit Kumar Anand, Advocate
For the Opposite Party/s : Mr.Manoj Kumar, APP

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CORAM: HONOURABLE MR. JUSTICE CHANDRA SHEKHAR JHA
ORAL JUDGMENT

Date : 17-03-2025

Heard Mr. Amit Kumar Anand, learned counsel
appearing for the petitioner and learned A.P.P. for the State.

2. This application has been preferred for quashing
the order dated 23.09.2013 as passed by the learned 2nd
Additional Chief Judicial Magistrate, Purnea, whereby
cognizance has been taken in connection with Complaint Case
No. 3578 of 2012 for the offence punishable under Sections
420, 468 and 34 of the Indian Penal Code against the
petitioner.

3. The brief facts of the case is that the complainant



Opposite Party No.2 namely, Rana Pratap Singh has alleged that he had purchased a land through registered sale deed in the name of his wife namely, Mani Mala Devi on 28.12.1993 at Mauza Maharajganj bearing Khata No. 184, Khesra No. 128, Thana No. 238 Rakwa 2 Kattha 7 Dhur 15 Dhurki and also enjoying possession. It is alleged that the accused persons have engaged their business of forged transaction of land since long time. It is further alleged that accused persons had made false power of attorney in connivance with a forged lady in the name of the wife of the complainant/O.P. No.2 on 10.06.2008. The complainant further alleged that on the basis of aforesaid forged power of attorney, accused persons sold out the land to co-accused namely, Arvind Kumar Yadav and in this forged work accused No. 2, 3 and 4 (the petitioner) helped the accused No. 1. When the complainant came to know about this, he asked to Arvind Kumar Yadav, who replied that accused No. 1, sold it to him against duly paid consideration amount. It is further alleged that when the complainant/O.P. No. 2 went to house of accused No.1 and asked about this matter, he was abused by them and also



threatened to face dire consequences.

4. On the basis of the aforesaid complaint and considering the statement of inquiry witnesses and also statement of complainant on his solemn affirmation (S.A.), the learned 2nd Additional Chief Judicial Magistrate, Purnea, took cognizance against the petitioner for the offences punishable under sections 420, 468 & 34 of the I.P.C.

5. It is submitted by learned counsel appearing for the petitioner that from bare perusal of the complaint petition, no *prima-facie* case is made out against the petitioner, as a very general and omnibus allegation available against him as to assist main accused namely, Gautam Kumar Gaurav along with co-accused Nikhil Kumar Singh and Raju Singh. It is submitted that the dispute is purely civil in nature which was given unnecessary criminal colour just to harass the petitioner out of oblique motive.

6. It is further submitted that the complaint in issue is not appears supported by affidavit of the complainant and on this score alone, the cognizance order is liable to be quashed/set-aside. In support of his submission, learned



counsel relied upon the legal report of Hon'ble Supreme Court as available through **Usha Chakraborty and Anr. Vs. State of West Bengal and Anr. [2023 SCC Online SC 90]; Priyanka Srivastava Vs. State of Uttar Pradesh [2015 (6) SCC 287]** and **State of Haryana and Ors. Vs. Bhajan Lal and Ors [(1992) Supp (1) SCC 335]**.

7. Despite of service of notice, which served personally upon O.P. No. 2, none appeared on his behalf to join the present proceeding.

8. It would further be apposite to reproduce para 6, 7, 8 & 10 of **Usha Chakraborty case (supra)**, which reads as under:

"6. 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.

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 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. 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. It would be further apposite to reproduce para **30 & 31** of the legal report of Hon'ble Supreme Court in **Priyanka Srivastava' case (supra)**, which are as under for a ready reference:

"30. In our considered opinion, a stage has come in this country where Section 156(3) Cr.P.C. applications are to be supported by an affidavit duly sworn by the applicant who seeks the invocation of the jurisdiction of the Magistrate. That apart, in an appropriate case, the learned Magistrate would be well advised to verify the truth and also can verify the veracity of the allegations. This affidavit can make the applicant more responsible. We are compelled to say so as such kind of applications are being filed in a routine manner without taking any responsibility whatsoever only to harass certain persons. That apart, it becomes more disturbing and alarming when one tries to pick up people who are passing orders under a statutory provision which can be challenged under the framework of said Act or under Article 226 of the Constitution of India. But it cannot be done to take undue advantage in a criminal court as if somebody is determined to settle the scores.

31. We have already indicated that there has to be prior



applications under Section 154(1) and 154(3) while filing a petition under Section 156(3). Both the aspects should be clearly spelt out in the application and necessary documents to that effect shall be filed. The warrant for giving a direction that an the application under Section 156(3) be supported by an affidavit so that the person making the application should be conscious and also endeavour to see that no false affidavit is made. It is because once an affidavit is found to be false, he will be liable for prosecution in accordance with law. This will deter him to casually invoke the authority of the Magistrate under Section 156(3). That apart, we have already stated that the veracity of the same can also be verified by the learned Magistrate, regard being had to the nature of allegations of the case. We are compelled to say so as a number of cases pertaining to fiscal sphere, matrimonial dispute/family disputes, commercial offences, medical negligence cases, corruption cases and the cases where there is abnormal delay/laches in initiating criminal prosecution, as are illustrated in Lalita Kumari are being filed. That apart, the learned Magistrate would also be aware of the delay in lodging of the FIR."

10. It would be apposite to reproduce **para 102** of the decision of Hon'ble Supreme Court as available through **Bhajan Lal's case (supra)**, which are as follows:

'**102.** In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV 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 channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

(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 Act concerned (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 Act concerned, 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.”

11. Taking note of the factual and legal submission as advanced above, it appears that the complaint in issue i.e. Complaint Case No. 3578/2012 was filed before the learned Chief Judicial Magistrate, Purnea without affidavit. It also appears from perusal of complaint petition that a very general and omnibus allegation against this petitioner is available as to assist main co-



accused namely, Gautam Kumar Gaurav along with other co-accused persons. The nature of dispute between the parties appears purely civil in nature for which present criminal prosecution *prima-facie* appears brought with an oblique motive through present complaint case. Case in issue covered *prima-facie* under guideline Nos. 1, 5 & 7 of **Bhajan Lal’s case (supra)**.

12. Accordingly, the impugned cognizance order dated 23.09.2013 as passed by the learned 2nd Additional Chief Judicial Magistrate, Purnea, in connection with Complaint Case No. 3578 of 2012 is hereby quashed/set-aside.

13. This application stands allowed.

14. Let a copy of this judgment be communicated to the learned trial court/concerned court immediately.

(Chandra Shekhar Jha, J.)

Rajeev/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	18.03.2025
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