

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.64356 of 2024

Arising Out of PS. Case No.-118 Year-2021 Thana- GARDANIBAG District- Patna

1. Naman Kumar @ Abhinav Krishna, Minor under the guardianship of his mother namely, Smt. Kiran Kumari, D/o Ras Bihari Singh, S/O- Sri Binay Krishna, R/O-Mohalla-Shivaji Path, Yarpur, P.S.-Gardanibag, Distt.-Patna.
2. Binay Krishna, Son of Late Banarasi Singh Vijayee, R/O-Mohalla-Shivaji Path, Yarpur, P.S-Gardanibag, Dist.-Patna.

... .. Petitioner/s

Versus

1. The State of Bihar.
2. Shankar Kumar @ Shankar Kumar Ram Son of Late Ramesh Prasad R/O- Mohalla- Yarpur Shivaji Path, Rajputana, P.S-Gardanibag, Dist.-Patna.

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr. Pushkar Narayan Shahi, Sr. Advocate Mr. Ansul, Sr. Advocate Mr. Rajesh Kumar Sukla, Advocate Mr. Uday Pratap Singh, Advocate Mr. Rajesh Kumar, Advocate Mr. Ankit, Advocate
For the Opposite Party/s	:	Mr. Anil Kumar, APP

CORAM: HONOURABLE MR. JUSTICE CHANDRA SHEKHAR JHA
ORAL JUDGMENT

Date : 04.03.2025

The present quashing petition preferred to quash the Gardanibagh (Patna) P.S. Case No. 118/2021 dated 22.03.2021, lodged for the offences punishable under Sections 279, 337, 338 and 304A of the Indian Penal Code. The aforesaid FIR was lodged on the basis of written report of the informant/opposite party no. 2, namely Shankar Kumar @ Shankar Kumar Ram.

2. The brief case of prosecution, as it appears from the written report of the informant/opposite party no. 2 made before Gardanibagh Police Station on 22.03.2021 that on



20.03.2021 at about 6:00 PM his son, namely, Shivam Kumar while going to purchase some goods from a nearby shop, the son of petitioner no. 2 namely, Naman Kumar, who is aged about 14 years has dashed him with his scooty, where petitioner no. 2 was sitting as a pillion rider. It is alleged that after the said occurrence, both father and son together assaulted the son of the informant/opposite party no. 2 badly. It is also alleged that both petitioners usually assault the children of the locality, while playing. It is submitted that petitioner no. 2 created a havoc in society being an advocate of the Patna High Court. It is stated that the son of opposite party no. 2 during his treatment succumbed to his injuries and, as such, it was requested to take strict action against both petitioners, if possible to hang both of them.

3. Mr. P.N. Shahi, learned Senior Counsel and Mr. Ansul, learned Senior Counsel while arguing on behalf of petitioners submitted that the entire prosecution story maliciously hatched up by anti social element of the locality who are in inimical terms with petitioner no. 2. It is submitted that the opposite party no. 2 as feeling difficulty in trade of



illicit and spurious liquor, named petitioner no. 2 who is a sincere and a regular practitioner of this Court since 2002 and presently he is Special Public Prosecutor (SC/ST) in Patna High Court, whereas petitioner no. 1 is his minor son. In this context, it is submitted that alleged occurrence took place on 20.03.2021 at about 6:10 PM but the information to the police has been given on 22.03.2021 after two days when son of opposite party no. 2 died during treatment. It is pointed out that while playing together, the son of opposite party no. 2 entered into scuffle with other childrens playing there including the son of opposite party no. 2, where he fell to the ground and received bodily injuries to which he succumbed during treatment in hospital but as an afterthought to get claim under the Motor Vehicle Act, the occurrence which took place amongst the children, was given colour of an intentional hitting by scooty for which present FIR was lodged under Section 304A of the Indian Penal Code.

4. It is submitted by Mr. Ansul, learned senior counsel that if the version of FIR be taken on its face then it can be said safely that by using scooty the son of opposite



party no. 2 was dashed, therefore, it was not even the accident, rather it was something which made intentional but police registered a case under Section 304A of the Indian Penal Code. It is pointed out that the informant/opposite party no. 2 projected himself as an eyewitness of the occurrence but he could not pointed out the registration number of the scooty. This is not a case of the informant that the scooty registration plate was not available, or after hitting with scooty, petitioners ran away, which in itself make the case of opposite party no. 2/prosecution doubtful.

5. Mr. P.N. Shahi, learned senior counsel arguing further submitted that the son of opposite party no. 2 died during his treatment out of "*Septicemia*" and just to grab the money from petitioners, he was implicated falsely with the occurrence which was never taken place in the manner as it was informed through FIR in issue to local police.

6. Mr. Shahi, in this context, further submitted that the petitioner no. 1 who is the son of petitioner no. 2 on the date of occurrence i.e. on 20.03.2021 was less than 12 years of age and, therefore, protected under Section 83 of the



Indian Penal Code.

7. It is jointly submitted by both learned senior counsels Mr. Shahi and Mr. Ansul that the oblique motive can be gathered easily from the face of FIR as opposite party no. 2 prayed through FIR itself a sentence of hanging for both these petitioners. While concluding argument, learned senior counsels relied upon the legal report of Hon'ble Supreme Court as available through ***Neeharika Infrastructure Private Limited Vs State of Maharashtra & Others*** reported through ***(2021) 19 SCC 401***, and also ***State of Haryana and Ors. Vs. Bhajan Lal and Ors.***, reported in ***1992 Supp (1) Supreme Court Cases 335***, and submitted that no cognizable case appears made out against petitioners from facial perusal of FIR, rather the present FIR was lodged out of oblique and ulterior motive due to neighbourhood differences and jealous approach. It is pointed out that the written report also suggest that petitioner no. 2 and petitioner no. 1 usually physically assaulted the childrens of the locality while they were playing by closing them inside the room but no such complaint was made ever against these



petitioners by any of neighbours or parents of any such children before the present occurrence.

8. *Per contra*, learned Public Prosecutor Mr. Anil Kumar while opposing the quashing petition pointed out that opposite party no. 2 is the eyewitness of the occurrence, where allegation of dashing is available against Naman Kumar, who as per available documents appears less than 12 years on the date of occurrence. It is pointed out that the deceased was also 12 years old son of opposite party no. 2.

9. It would be apposite to reproduce the para no. 57 of the ***Neeharika Infrastructure Private Limited Case (supra)***, which reads as under:-

“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.”

10. It would be further apposite to re-produce para 102 of the **Bhajan Lal case (supra)**, which reads as under:

“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 informant 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 persons 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.”

11. It would further be apposite to reproduce

Section 83 of the Indian Penal Code, which reads as under:-

“83. Act of a Child above seven and under Twelve of immature understanding.- Nothing is an offence which is done by a child above seven years of age and under twelve, who has not attained sufficient maturity of understanding to judge of the nature and consequences of his conduct on that occasion.”

12. From the perusal of record, it appears that as per FIR, the name of son of petitioner no. 2 was disclosed as Naman Kumar, aged about 14 years, whereas as per Annexure-3, which is a birth certificate of petitioner no. 1, it appears that his name is Abhinav Krishna and his date of birth is 23.03.2009. Aforesaid certificate was issued by department



of Planning and Development, Government of Bihar, dated 22.02.2021. As per aforesaid certificate, the petitioner no. 1 on the date of occurrence was three days short of 12 years.

13. Opposite party no. 2 claimed himself as an eyewitness of the occurrence. He is the resident of same locality. He appears well acquainted with petitioner no. 1 and petitioner no. 2. Despite of all such acquaintance he could not name petitioner no. 1 correctly and said the name of petitioner no. 1 as "Naman Kumar" instead of "Abhinav Krishna". Being eye witness, he narrated through FIR that after alleged occurrence of dashing by scooty, some assault was made by petitioners but he could not note the registration number of said scooty which *prima facie* negates the entire allegation of dashing by any scooter on its face. There is no allegation against petitioner no. 2, who said to be a pillion rider at the time of occurrence, even *qua* any instigation to petitioner no.1 being minor son as to dash the son of opposite party no. 2.

14. Hence, in the want of scooty number, correct name and also in absence of any instigation *qua* petitioner no.



2, the occurrence cannot be believed on its face by any prudent man to make out a cognizable offence as narrated through written information of opposite party no. 2. Admittedly, petitioner no. 2 is an advocate. FIR in itself suggestive of neighbourhood disputes and differences to import ulterior and oblique motive.

15. This case appears covers against guideline nos. 1, 5 and 7 of ***Bhajan Lal's case (Supra)***.

16. Accordingly, Gardanibag (Patna) P.S. Case No. 118/2021 dated 22.03.2021 and the entire proceeding arising thereof *qua* petitioners is hereby quashed.

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

(Chandra Shekhar Jha, J)

veena/-

AFR/NAFR	AFR
CAV DATE	13.02.2025
Uploading Date	04.03.2025
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