

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.9634 of 2018

Arising Out of PS. Case No.-88 Year-2015 Thana- SABAUR District- Bhagalpur

Nagendra Kumar Yadav @ Nagendra Yadav, Son of Late Dwarika Prasad Yadav, Resident of village Kurpat, P.S. Sabour, District Bhagalpur.

... .. Petitioner/s

Versus

1. The State of Bihar
2. Khushboo Goswami, Wife of Shambhu Kumar Goswami, Resident of village Kurpat, P.S. Sabour, District Bhagalpur.

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr. Ashutosh Kumar, Advocate Ms. Geeta Kumari Jha, Advocate
For the State	:	Smt. Anita Kumari, APP
For the O.P. No.2	:	Mr. Murlidhar Mishra, Advocate

CORAM: HONOURABLE MR. JUSTICE SUNIL DUTTA MISHRA
ORAL ORDER

10 03-07-2026 1. Heard learned counsel for the petitioner as well as learned counsel for the O.P. No.2 and the learned APP for the State.

2. The present application has been filed under Section 482 of the Code of Criminal Procedure, 1973 (hereinafter referred to as 'Cr.P.C.') to quash the order dated 15.09.2015 passed by the learned A.C.J.M.-X, Bhagalpur (hereinafter referred to as 'Magistrate') in connection with Sabaur (Goradih) P.S. Case No.88 of 2015, wherein the learned Magistrate has taken cognizance for the offences punishable under Sections 341, 323, 354A, 379, 504, 506 and 509 of the Indian Penal Code, 1860 against the petitioner herein.



3. The prosecution case, in brief, is that the informant (O.P. No.2) alleged that on 08.05.2015 at about 6:30 P.M., while she was proceeding towards the agricultural field along with her sister-in-law (*bhabhi*), she found the petitioner allegedly abusing her husband near the house of one Raj Kishore Goswami. It is alleged that when the informant (O.P. No.2) objected to such conduct, the present petitioner abused and threatened her, forcibly snatched her gold chain, caught hold of her hand, attempted to drag her towards the nearby bushes and also assaulted her by slapping her. Thereafter, the informant (O.P. No.2) managed to escape from there and narrated the incident to her family members. Subsequently, the informant (O.P. No.2) submitted a written complaint resulting into registering of the F.I.R. bearing Sabaur (Goradih) P.S. Case No.88 of 2015 for the offences punishable under Sections 341, 323, 354A, 379, 504, 506 and 509 of the Indian Penal Code. Upon institution of the aforesaid F.I.R., the matter was investigated and, after completion of investigation, the police submitted charge-sheet dated 26.05.2015 bearing C.S. No.92 of 2015 against the petitioner under Section 504 of the Indian Penal Code.

4. However, the learned Magistrate noted that the



charge sheet has been filed against the petitioner under Sections 341, 354A, 379, 504, 506 & 509 of the Indian Penal Code and *vide* the impugned order dated 15.09.2015 passed in connection with Sabour (Goradih) P.S. Case No.88 of 2015, took cognizance of the said offences under Sections 341, 323, 354A, 379, 504, 506 and 509 of the Indian Penal Code against the petitioner. Being aggrieved by the said order taking cognizance and the continuation of the criminal proceeding arising therefrom, the petitioner has invoked the inherent jurisdiction of this Court under Section 482 of the Cr.P.C. seeking quashing of the impugned order as well as the entire criminal proceeding.

5. Learned counsel for the petitioner submits that the impugned order taking cognizance has been passed in a mechanical manner without proper application of judicial mind to the materials collected during investigation. He submits that the allegations made in the F.I.R. are false, motivated and have been levelled only to harass the petitioner on account of local political rivalry, as the husband of the O.P. No.2 (informant) was allegedly contesting the election for the post of *Pramukh*. Learned counsel further submits that the criminal prosecution has been maliciously instituted with an ulterior motive and is, therefore, liable to be quashed.



6. Learned counsel for the petitioner further submits that the materials collected during investigation do not disclose the commission of the offences alleged against the petitioner. He submits that no recovery of the alleged stolen gold chain has been effected, there is no independent witness supporting the prosecution version and the statements recorded during investigation do not furnish sufficient material to proceed against the petitioner. It is submitted that even if the allegations are accepted on their face value, the essential ingredients of the offences alleged are not made out against the petitioner.

7. Learned counsel further submits that the learned Magistrate failed to examine whether the materials placed before him disclosed sufficient grounds for proceeding against the petitioner and proceeded to take cognizance in a routine and perfunctory manner. It is submitted that the impugned order does not reflect due application of mind to the case diary or the evidence collected during investigation. Learned counsel, therefore, submitted that permitting the criminal prosecution to continue would amount to an abuse of the process of the Court, warranting interference by this Court in exercise of its inherent jurisdiction.

8. *Per contra*, learned counsel appearing on behalf of



O.P. No.2 submits that the F.I.R. as well as the materials collected during investigation disclose the commission of cognizable offences against the petitioner. It is contended that the learned Magistrate has rightly taken cognizance upon being satisfied with the materials available on record and that the issues raised by the petitioner involve disputed questions of fact, which can only be adjudicated during trial. However, he concedes that the charge sheet was filed against the petitioner only under Section 504 of Indian Penal Code.

9. Learned APP for the State submits that at the stage of taking cognizance, the learned Magistrate is only required to ascertain whether a *prima facie* case is made out and not to undertake a meticulous appreciation of the evidence. He further submits that appropriate order may be passed in the interest of justice.

10. I have anxiously considered the rival submissions advanced on behalf of the parties and have carefully perused the pleadings, the impugned order, and the materials brought on record. The issue which falls for consideration before this Court is whether, in the facts and circumstances of the present case and the materials collected during investigation, the continuation of the criminal proceeding and the impugned order



taking cognizance warrant interference in exercise of the inherent jurisdiction of this Court under Section 482 of the Cr.P.C.

11. Before advertng to the rival contentions, it would be apposite to notice the scope of the inherent jurisdiction of this Court under Section 482 of the Cr.P.C.. The power under the said provision is of an extraordinary nature and is required to be exercised sparingly, with circumspection and only in exceptional cases to prevent abuse of the process of any Court or otherwise to secure the ends of justice. At the stage of considering a prayer for quashing, the Court is not expected to undertake a meticulous appreciation of the evidence or adjudicate upon the correctness of the allegations. The only enquiry is whether the uncontroverted allegations contained in the F.I.R. and the materials collected during investigation, taken at their face value, *prima facie* disclose the commission of any offence and justify the continuation of the criminal prosecution. If the allegations, even if accepted in their entirety, do not constitute the ingredients of the alleged offences, or where the prosecution is manifestly attended with *mala fides* or amounts to an abuse of the process of the Court, the inherent jurisdiction under Section 482 may justifiably be invoked. Conversely,



where the materials disclose a *prima facie* case giving rise to disputed questions of fact requiring appreciation of evidence, such matters are ordinarily left to be adjudicated during trial.

12. Upon a careful perusal of the materials collected during the investigation, including the case diary, this Court finds that although serious allegations have been levelled against the petitioner, the same do not find adequate corroboration from the materials collected during investigation. The Investigating Officer has not brought on record any convincing material to substantiate the allegations of snatching of the gold chain or outraging the modesty of the O.P. No.2. Significantly, no recovery of the alleged stolen chain has been effected during investigation, nor is there any material indicating that the investigation yielded any objective evidence in support of the allegations.

13. This Court further finds that one of the material witnesses, namely Raj Kishore Goswami, near whose house the alleged occurrence is stated to have taken place, has not supported the prosecution version during investigation. On the contrary, he categorically stated before the Investigating Officer that he had no knowledge of the alleged occurrence. He further disclosed that the present case had been instituted on account of



an earlier monetary dispute involving the husband of the O.P. No.2 (informant) and certain local persons. The statement of such an independent witness, who was expected to have knowledge of the occurrence if it had actually taken place at the alleged place of occurrence, materially weakens the prosecution case at its very inception. The other independent witnesses also do not support the allegations made in the F.I.R.

14. It further appears from the case diary that despite the absence of any substantial corroborative material and notwithstanding the statements recorded during investigation, the Investigating Officer proceeded to submit charge-sheet and the learned Magistrate took cognizance without adverting to these significant aspects of the matter. The impugned order does not reflect any independent application of judicial mind to the quality of the materials collected during investigation or the apparent inconsistencies emerging therefrom. The order merely proceeds on the basis of submission of the police report without recording satisfaction as to the existence of sufficient grounds for proceeding against the petitioner.

15. In the considered opinion of this Court, the materials collected during investigation, even if accepted at their face value, do not disclose sufficient grounds to justify the



continuation of the criminal prosecution against the petitioner. Rather, the case diary itself gives rise to a reasonable doubt regarding the genesis of the prosecution and lends support to the plea that the criminal proceeding has been initiated on account of prior animosity. In such circumstances, compelling the petitioner, to undergo the rigours of a criminal trial would amount to an abuse of the process of the Court and would not serve the ends of justice, thereby warranting interference by this Court in exercise of its inherent jurisdiction under Section 482 of the Cr.P.C.

16. Moreover, the facts of the present case, when tested on the touchstone of the principles laid down by the Hon'ble Supreme Court in *State of Haryana & Ors. v. Bhajan Lal & Ors.*, reported in *1992 Supp (1) SCC 335*, unmistakably bring the case within the ambit of the categories warranting exercise of the inherent jurisdiction of this Court. The materials collected during investigation fail to *prima facie* substantiate the allegations levelled against the petitioner and, on the contrary, disclose circumstances creating serious doubt regarding the very genesis of the prosecution. The statement of the material witness, coupled with the absence of any corroborative evidence in support of the allegations, renders the continuation of the



criminal proceeding wholly unjustified. In the considered opinion of this Court, the present prosecution appears to be manifestly attended with *mala fide* and has been instituted with an ulterior motive arising out of previous enmity and political rivalry. Consequently, the present case squarely falls within Categories illustratively enumerated in ***Bhajan Lal (supra)***, namely, that the uncontroverted allegations and the materials collected do not disclose the commission of a cognizable offence justifying continuation of the prosecution, the evidence collected fails to make out a case against the petitioner, and the criminal proceeding appears to have been maliciously instituted with an ulterior motive for wreaking vengeance. Therefore, continuation of the criminal proceeding would amount to an abuse of the process of the Court.

17. In view of the aforesaid discussion, this Court is of the considered opinion that the learned Magistrate failed to examine whether the materials collected during investigation disclosed sufficient grounds for proceeding against the petitioner and proceeded to take cognizance in a routine manner without due application of judicial mind. The continuation of the criminal proceeding, despite the absence of *prima facie* material and in the face of the infirmities noticed hereinabove,



would result in unnecessary harassment to the petitioner and would amount to an abuse of the process of the Court. This Court is, therefore, satisfied that the present case is a fit one for exercising its inherent jurisdiction under Section 482 of the Cr.P.C. to secure the ends of justice and to prevent abuse of the process of law.

18. Resultantly, the order dated 15.09.2015 passed by the learned A.C.J.M.-X, Bhagalpur, in connection with Sabaur (Goradih) P.S. Case No.88 of 2015, whereby cognizance has been taken for the offences punishable under Sections 341, 323, 354A, 379, 504, 506 and 509 of the Indian Penal Code against the petitioner, is hereby set aside and the entire criminal proceeding arising out of the aforesaid police case, so far as it relates to the present petitioner, also stands quashed.

19. The present Criminal Miscellaneous Application is, accordingly, allowed.

20. Interim order(s), if any, stands vacated.

21. Let a copy of this order be transmitted to the Court concerned forthwith for needful and compliance.

(Sunil Dutta Mishra, J)

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