

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.46209 of 2023

Arising Out of PS. Case No.-627 Year-2021 Thana- PATNA COMPLAINT CASE District-
Patna

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1. GOPESH KUMAR Son of Late Om Prakash Sharma Resident of village - Chintamanichak, ward no. 21, P.S. - Mokama, Distt. - Patna
 2. Chandra Prakash Raghav @ Raghav Kumar Son of Sri Gopesh Kumar Resident of village - Chintamanichak, ward no. 21, P.S. - Mokama, Distt. - Patna
 3. Chandrabhushan Kumar @ Chote Son of Late Bachkul Prasad Singh Resident of village - Chintamanichak, ward no. 21, P.S. - Mokama, Distt. - Patna

... .. Petitioner/s

Versus

1. The State of Bihar Bihar
2. Anil Kumar Son of Late Darogi Saw R/o Sahbegpur, ward no. 22, P.O. - Chintamanichak, P.S. - Mokama, Distt. - Patna

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr.Diwakar Upadhyaya, Advocate
For the Opposite Party/s : Mr.Shantanu Kumar, APP

CORAM: HONOURABLE MR. JUSTICE ANSUL
ORAL JUDGMENT

Date : 23-06-2026

Heard learned counsel for the petitioners and learned
Additional Public Prosecutor for the State.

2. The petitioners have challenged the order dated 04.04.2022 passed by Sri Rajesh Baranwal, Judicial Magistrate, IInd Class, Barh (Patna), in Complaint Case No. 627 (C) of 2021, whereby the learned Magistrate took cognizance of offences under Sections 323, 448, 504 and 506 read with Section 34 of the Indian Penal Code against the petitioners. The cognizance order, briefly



stated, records that the case record was fixed for order under Section 203 or 204 of the Code of Criminal Procedure and that no attendance had been filed on behalf of the complainant. The learned Magistrate heard the counsel for the complainant and perused the case record. He found that the complainant had examined two enquiry witnesses, namely Dipak Kumar and Sintu Kumar, along with his own statement on oath. On a consideration of the material on record, a prima facie case was found to be made out under the aforesaid sections against four of the named accused, namely (i) Gopesh Kumar, (ii) Chandrabhushan Kumar @ Chote, (iii) Raghav Kumar and (iv) Om Prakash Sharma, and summons were directed to be issued.

3. The complainant, Anil Kumar (Opposite Party No. 2), filed Complaint Case No. 627 (C) of 2021 and has alleged that on 02.12.2021, all the accused persons along with three to four unknown persons came to the site of M/s Ramnath Firm, where the complainant's son's workers were laying Jio fibre cable. They abused the labourers and the mechanic, and threatened the witness Deepak Kumar, demanding Rs. 50 lakhs as Rangdari at gunpoint. Deepak Kumar was chased away. On the same night at about 10 P.M., Gopesh Kumar and others entered the complainant's house and tried to kidnap the complainant.



4. Learned counsel for the petitioners submits that there is a civil dispute between the parties. Gopesh Kumar, petitioner no. 1, and Chandan Kumar, son of the complainant, had formed a partnership, namely M/s Ramnath, vide a registered partnership deed dated 05.01.2015. The firm was working for Reliance Jio Infocom Limited. Chandan Kumar unfortunately passed away on 02.01.2020. The surviving partner, Gopesh Kumar, thereafter tried to run the firm. The family of the deceased partner, especially the wife Nutan Kumari and the mother Chinta Devi, started making claims over the firm's assets. Nutan Kumari moved the SBI, Aunta Branch, to stop the operation of the firm's joint account.

5. This led Gopesh Kumar to file Title Suit No. 173 of 2021 on 21.10.2021 before the Sub-Judge-I, Barh (Patna). The prayer in the suit was for a declaration of his entitlement to operate the account and assets of the firm as the sole surviving partner. The suit was filed on 21.10.2021, and the present complaint case was lodged on 07.12.2021, that is, about one and a half months after the filing of the civil suit.

6. Learned counsel for Opposite Party No. 2 submits that the offences are made out and that the petitioner is trying to take advantage of the untimely death of the son of the complainant and



is attempting to take control of the partnership business, in which the widow of the deceased partner has an equal share.

7. In the understanding of this Court, the dispute is civil in nature. The criminal case seems to be an attempt to coerce the opposite side in civil litigation. The complainant is the father of the deceased partner, whose family is the defendant in the civil suit.

8. The Hon'ble Supreme Court in ***R.P. Kapur vs. State of Punjab*** reported in ***AIR 1960 SC 866*** has laid down that when the allegations in the FIR or complaint, even if accepted on their face value, do not constitute any offence alleged, the case can be quashed. In the present case, probably on a bare *prima facie* reading, a case may be made out. However, the quashing jurisdiction, long dependent upon the categories enumerated in ***State of Haryana vs. Bhajan Lal and Others*** reported in ***1999 Supp (1) SCC 335*** has now been given an expanded scope.

9. In ***Salib @ Shalu @ Salim vs. State of U.P. and Others*** reported in ***2023 INSC 687***, decided on 08.08.2023, the Hon'ble Supreme Court has held that even when a *prima facie* case is made out, the Court has the power and jurisdiction to read between the lines and look at the attending circumstances to arrive at a finding as to whether the case is actuated by *mala fides*. It was



observed that whenever an accused comes before the Court invoking either the inherent powers under Section 482 of the Code of Criminal Procedure or the extraordinary jurisdiction under Article 226 of the Constitution to get the FIR or the criminal proceedings quashed essentially on the ground that such proceedings are manifestly frivolous or vexatious or instituted with an ulterior motive for wreaking vengeance, the Court owes a duty to look into the matter with care and a little more closely. The Court while exercising its jurisdiction under Section 482 of the Code need not restrict itself only to the stage of a case but is empowered to take into account the overall circumstances leading to the initiation of the case as well as the materials collected in the course of investigation.

10. In *Indian Oil Corporation vs. NEPC India Limited* reported in **(2006) 6 SCC 736**, the Hon'ble Supreme Court held that criminal cases lodged in cases of business rivalry or commercial dispute in civil litigation need to be quashed.

11. Considering that the dispute is essentially civil in nature and the parties are fighting each other with regard to the ownership and control of the accounts and finances of a private firm, and this criminal prosecution has been initiated by the father of the deceased partner about one and a half months after the filing



of the civil suit by petitioner no. 1, this case is allowed. The order taking cognizance dated 04.04.2022 passed by Sri Rajesh Baranwal, Judicial Magistrate, IInd Class, Barh (Patna), in Complaint Case No. 627 (C) of 2021, is quashed.

12. Accordingly, the present petition stands allowed.

(Ansul, J)

abhishekk/-

AFR/NAFR	NAFR
CAV DATE	NA
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