

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.24763 of 2016**

Arising Out of PS. Case No.-87 Year-2013 Thana- BHOJPUR COMPLAINT CASE
District Bhojpur

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Asha Pandey W/O Damodar Pandey resident of Village Sabalpur P.S. Barahara District Bhojpur at present Apurba Apartment in front of Sadar Hospital Ara, P.S. Ara Nagar District Bhojpur.

... .. Petitioner/s

Versus

1. State of Bihar
2. Nidhi Pandey W/O Late Uday Shankar Pandey resident of Village Sabalpu, P.S. Barahara, District Bhojpur.

... .. Opposite Party

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Code of Criminal Procedure---section 482---petition to quash order taking cognizance of offence u/s 419, 504 and 385/34 IPC--- rent dispute among co-sharer of land---plea that present criminal case was lodged out of civil disputes and on this score alone, it is a fit case to be quashed---Held: present criminal case was lodged purely out of rent related dispute received from M/s. Airtel Pvt. Ltd. with a reason to harass due to oblique and ulterior motive being adjacent plot holder, where learned Trial Court even did not take cognizance against company--- impugned order of cognizance with all its consequential proceedings quashed and set aside. (Para 2, 5, 9)

(2023) SCC Online SC 90

.....Relied Upon.

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Appearance :

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|--------------------------|---|--------------------------|
| For the Petitioner/s | : | Mr. Uday Kumar, Advocate |
| For the Opposite Party/s | : | Mr. T.N.Thakur, APP |
| For O.P. No. 2 | : | Mr. Ajit Kumar, Advocate |

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CORAM: HONOURABLE MR. JUSTICE CHANDRA SHEKHAR JHA
ORAL JUDGMENT

Date : 15-04-2024

Heard learned counsel for the petitioner and

learned counsel for the respondents.

2. The present quashing petition has been

preferred to quash the order dated 03.06.2014 passed

in Complaint Case No. 87 (c) of 2013, Trial No. 13/15

where learned Judicial Magistrate, 1st Class Bhojpur, Ara

took cognizance for the offences punishable under

Sections 419, 504 and 385/34 of the Indian Penal Code

(in short IPC) against the petitioner.



3. O.P. No. 2 join the present proceedings.

4. From the complaint petition it appears that Nidhi Pandey w/o of Late Uday Shankar Pandey resident of Village Sabalpur P.S. Barahara, District Bhojpur has filed a complaint on 17.01.2013 before learned Chief Judicial Magistrate Bhojpur, Ara alleging therein that she purchased a land bearing *khata* no. 706, *khesra* no. 4224, area $2 \frac{1}{4}$ *katha* on 01.10.1991 by registered sale deed in the name of her husband and $2 \frac{1}{4}$ *katha* in the same plot in her name and the name of her husband on that very day accused Damodar Pandey also purchased $2 \frac{1}{4}$ *katha* of land in his name and $2 \frac{1}{4}$ land in the name of his wife in the said plot. She further stated that Damodar Pandey is the full blood-brother of her husband, namely Uday Shankar Pandey and Asha Pandey is his wife as such total land is $4 \frac{1}{2}$ *katha* in the name of complainant and her husband and $4 \frac{1}{2}$ *katha* in the name of Damodar Pandey and Asha Pandey. Accordingly, mutation has been done of the alleged land



in her name and in the name of her husband and she makes payment to government revenue. Accused no. 1 and 2 have constructed house on their land total area of $4 \frac{1}{2}$ *katha*. It has further been stated that the husband of the complainant namely Uday Shankar Pandey was a booking clerk in Indian Railway, who died on 12.08.1999 and thereafter the complainant was appointed on compassionate ground as Parcel Clerk and posted at Rajendra Nagar Terminal. The entire paper of land is in the possession of Damodar Pandey who with a view to capture her land area $4 \frac{1}{2}$ *katha* started hatching criminal conspiracy and locked her gate. The accused persons have illegally installed mobile tower of M/s. Airtel Pvt. Ltd in her land as Damodar Pandey and his wife Asha Pandey are taking rent and they also captured her house constructed by her husband on the alleged plot. The complainant is living in Patna with her two daughters and taking advantage of the said accused no(s). 1 & 2 have committed cheating and forgery. The



complainant sent a legal notice to the accused persons and also gave detailed application to the S.P. Bhojpur on 19.08.2012 which was not fruitful. On 17.01.2013 at 10:00 clock the complainant alongwith the witnesses went at the house of Damodar Pandey and requested him not to harras her.

5. It is submitted by learned counsel for the petitioner that present criminal case was lodged out of civil disputes and on this score alone, it is a fit case to be quashed. It is submitted that partition is not disputed rather allegation is of not distributing the rent properly as received from M/s. Airtel Pvt. Ltd. for installing the mobile tower in the land share of O.P. No. 2. It is further submitted that as per sale deed petitioner and O.P. No. 2 each are title holder and co-sharer of 4 $\frac{1}{2}$ *katha* of land out of total land of 9 *katha*. It is further submitted that M/s. Airtel Pvt. Ltd. was also made party through present complaint petition but after going through the materials available on record learned trial



court did not took cognizance against the company, *prima facie*, making allegation false on its face regarding collection of rent out of mobile tower. It is further submitted that nothing overt act appears in the complaint petition, which may, *prima facie*, suggest that petitioner was intended to cheat O.P. No. 2, from very inception, where present criminal case was only lodged for the reason that she is one of the co-sharer of the said land.

6. While concluding the argument learned counsel referred to the legal report of Hon'ble Supreme Court in the case of **Usha Chakraborty and Another Vs. State of West Bengal and Another** as reported in **(2023) SCC Online SC 90**.

7. Learned APP duly assisted by learned counsel appearing on behalf of O.P. No. 2, while opposing the quashing application submitted that core issue in the present case is rent dispute.

8. It would be apposite to reproduce the



paragraph no(s). 6, 7, 8, 9 and 10 as reported through
Usha Chakraborty case (supra), which reads as
under:

6. In *Paramjeet Batra v. State of Uttarakhand*, 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 v. State of Kerala*, 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 v. Sanjay Sharma***, 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.

9. In the decision in ***State of Haryana v. Bhajan Lal***, a two Judge Bench of this Court considered the statutory provisions as also the earlier decisions and held as under:—

(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 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.

10. In *Neeharika Infrastructure Pvt. Ltd. v. State of Maharashtra*, 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 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.”

9. In view of aforesaid factual and legal discussions and by taking note of the fact that present criminal case was lodged purely out of rent related dispute received from M/s. Airtel Pvt. Ltd. with a reason to harass due to oblique and ulterior motive being adjacent plot holder, where learned Trial Court even did not taken cognizance against company, accordingly, by taking note of guidelines as mentioned in **Usha Chakraborty Case (supra)**, impugned order of cognizance dated 03.06.2014 with all its consequential proceedings, *qua*, petitioner arising thereof as passed in Complaint Case No. 87 (c) of 2013, Trial No. 13/15, pending before learned Judicial Magistrate, 1st Class



Bhojpur, Ara is hereby quashed and set aside.

10. The application stands allowed.

11. Let a copy of this judgment be sent to
learned Trial Court, immediately.

(Chandra Shekhar Jha, J.)

S.Tripathi/-

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