

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.1193 of 2024

Arising Out of PS. Case No.-967 Year-2022 Thana- GAYA COMPLAINT CASE DistrictGaya

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1. Rajeev Nayan S/O- Rajendra Prasad R/O -OLD Devi Mandir , Uta More, P.O.,P.S.- Jehanabad, Dist.- Jehanabad Pin-804417
 2. Rajendra Prasad S/O- Late Ram Chandra Prasad R/O -OLD Devi Mandir , Uta More, P.O.,P.S.- Jehanabad, Dist.- Jehanabad Pin-804417
 3. Sunaina Devi @ Sunaina Kumari W/O- Rajeev Nayan R/O -OLD Devi Mandir , Uta More, P.O.,P.S.- Jehanabad, Dist.- Jehanabad Pin-804417

... ... Petitioner/s

Versus

1. The State of Bihar Secretary Through Dept. of Law, Patna
2. Avinash Arun S/O- Late Anilprasad R/O-Pachhalti, P.O.-bodh Gaya, P.S. Bodh Gaya, Dist.- Gaya
3. The Superintendent of Police, Gaya, Distt. Gaya, Bihar
4. The S.H.O. P.S. Bodh Gaya Bihar

... ... Respondent/s

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Constitution of India, 1950—Article 226—Maintainability of Writ Petition—without receiving service report of summons, the learned Magistrate issued bailable warrant and thereafter, non-bailable warrant and finally process under Section 482 of the Code issued—order of issuance of process of summons or warrant of arrest and the process under Section 82 Cr.P.C. are judicial orders—petitioners prayed for setting aside an order passed by the learned Judicial Magistrate issuing process under Section 82 of the Code and direction upon the police officer to remove the lock of the house of the petitioners—a judicial order passed by Civil Court is not amenable to writ jurisdiction under Article 226—impugned order assailable in revision either before the learned Sessions Judge or in this Court. The writ petition against the aforesaid orders is not maintainable.

(Paras 10, 11, 14, 18 and 19)

(2021) 5 SCC 524; (2023) SCC Online SC 951; (2021) 2 SCC 427; 2025 SCC Online SC 17; (2015) 9 SCC 1; (2021) 16 SCC 536; 2022 SCC Online J&K 728; (2015) 5 SCC 423; (2019) 4 SCC 214—**Relied Upon.**

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... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Hansraj, Advocate Mr. Sanjeev Ranjan, Advocate Mr. Ramakant Ram, Advocate
For the Respondent/s	:	Mr. Saurav Kumar, AC to GA-5

CORAM: HONOURABLE MR. JUSTICE BIBEK CHAUDHURI
CAVJUDGMENT

Date : 28-02-2025

1. The petitioners are accused persons against whom a Court complaint was lodged by the Respondent No. 2 on 1st of July, 2022 before the learned Chief Judicial Magistrate, Gaya. On the basis of the said complaint, the learned Chief Judicial Magistrate took cognizance and transferred the case under Section 190(1)(a) to the Court of learned Judicial Magistrate, 1st Class, Gaya for further proceeding. On 29th of July, 2022, the complainant and six others witnesses on behalf of the



prosecution were examined and learned Magistrate took cognizance of offence under Sections 406 and 420 of the Indian Penal Code against the accused persons and issued process *vide* order dated 27th of January, 2023. Though no summons was served upon the petitioners, the learned Magistrate issued bailable warrant on 1st of July, 2023 and subsequently, non-bailable warrant was issued without the receipt of non execution report of bailable warrant on 22nd of September, 2023, fixing 7th of December, 2023 for execution report of non-bailable warrant. No non-bailable warrant was executed against the petitioners but on 21st of February, 2024, process under Section 82 of the Cr.P.C. was initiated by the learned Magistrate against the petitioners. On the basis of process under Section 82 of the Code of Criminal Procedure, the Police Officers sealed the premises of accused on 13th of April, 2024. The petitioners apprehending their arrest in Complaint Case No. 967 of 2022, registered under Sections 406 and 420 of the Indian Penal Code, filed application for anticipatory bail before the learned Sessions Judge, Gaya, which has been rejected by the learned Additional Sessions Judge-I, Gaya *vide* order dated 3rd of May, 2024.

2. It is submitted on behalf of the petitioners that the entire action on the part of the respondent authorities is arbitrary



and a glaring example of colourable exercise of power. Therefore, by filing the instant writ petition, the petitioners have prayed for the following reliefs: -

i. For issuance of direction to judicial officer for securing service of process before further proceeding.

ii For setting aside the order of bailable warrant dated 01.07.2023 and non bailable warrant dated 22.09.2023, issued against the petitioners without service of earlier process.

iii For issuance of order for recalling the order passed under Section 82 of the Criminal Procedure Code dated 10.01.2024.

iv. For issuance of order to unlock the premise of the petitioner which has been locked by jurisdictional police officers in utter disregard of law.

v. For any other relief whatsoever this Hon'ble Court feels proper in the light of the available facts.

3. At the time of hearing of the instant writ petition a preliminary question of maintainability arose to the effect as to whether against a judicial order passed by the learned Judicial Magistrate in exercise of his judicial functions, a writ petition is maintainable or not.

4. The learned Advocate on behalf of the petitioners



submits that the writ petition is maintainable when the order passed by the learned Magistrate appears to be an abuse of process of law and is passed only to harass the accused. In that case, the judicial order can be quashed in exercise of powers under Article 226 of the Constitution of India or in exercise of powers under Section 482 of the Cr.P.C.

5. In support of his contention, he refers to a decision of the Hon'ble Supreme Court in the case of ***Kapil Agarwal & Ors. v. Sanjay Sharma & Ors.***, reported in ***(2021) 5 SCC 524***.

6. The learned Advocate appearing on behalf of the petitioners also refers to another case in ***Mohammad Wajid & Anr. v. State of U.P. & Ors.***, reported in ***(2023) SCC OnLine SC 951***. It is observed in the above-mentioned report in paragraphs 32 to 34 as hereunder: -

“32. However, as observed earlier, the entire case put up by the first informant on the face of it appears to be concocted and fabricated. At this stage, we may refer to the parameters laid down by this Court for quashing of an FIR in the case of Bhajan Lal (supra). The parameters are:—

“(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.”

33. In our opinion, the present case falls within the parameters Nos. 1, 5 and 7 resply referred to above.

34. At this stage, we would like to observe something important. Whenever an accused comes before the Court invoking either the inherent powers under Section 482 of the Code of Criminal Procedure (CrPC) or 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 the ulterior motive for wreaking vengeance, then in such circumstances the Court owes a duty to look into the FIR with care and a little more closely.



We say so because once the complainant decides to proceed against the accused with an ulterior motive for wreaking personal vengeance, etc., then he would ensure that the FIR/complaint is very well drafted with all the necessary pleadings. The complainant would ensure that the averments made in the FIR/complaint are such that they disclose the necessary ingredients to constitute the alleged offence. Therefore, it will not be just enough for the Court to look into the averments made in the FIR/complaint alone for the purpose of ascertaining whether the necessary ingredients to constitute the alleged offence are disclosed or not. In frivolous or vexatious proceedings, the Court owes a duty to look into many other attending circumstances emerging from the record of the case over and above the averments and, if need be, with due care and circumspection try to read in between the lines. The Court while exercising its jurisdiction under Section 482 of the CrPC or Article 226 of the Constitution 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/registration of the case as well as the materials collected in the course of investigation. Take for instance the case on hand. Multiple FIRs have been registered over a period of time. It is in the background of such



circumstances the registration of multiple FIRs assumes importance, thereby attracting the issue of wreaking vengeance out of private or personal grudge as alleged.”

7. On the same issue the learned Advocate appearing on behalf of the petitioners refers to a decision in ***Arnab Manoranjan Goswami v. State of Maharashtra & Ors.***, reported in ***(2021) 2 SCC 427***, whereby and whereunder, it is held by the Hon'ble Supreme Court that when F.I.R. contains allegation of malicious criminal proceeding and harassment by the authorities and *prima facie* it does not reveal any offence, the Writ Court in exercise of its jurisdiction under Article 226 of the Constitution of India can quash the F.I.R.

8. The learned Advocate for the petitioners also refers to the latest decision on the subject dealt with by the Hon'ble Supreme Court in ***Kim Wansoo v. State of Uttar Pradesh & Ors.***, reported in ***2025 SCC OnLine SC 17***. Paragraph 11 of the aforesaid report is relevant for our purpose and quoted below.

“11. In the contextual situation, it is also relevant to refer to the decision of this Court in *Mohammad Wajid. v. State of U.P.*[5](#), whereunder this Court, in so far as it is relevant, held thus:—

“34.....it will not be just enough for the Court to look into the averments made in the



FIR/complaint alone for the purpose of ascertaining whether the necessary ingredients to constitute the alleged offence are disclosed or not. In frivolous or vexatious proceedings, the Court owes a duty to look into many other attending circumstances emerging from the record of the case over and above the averments and, if need be, with due care and circumspection try to read in between the lines. The Court while exercising its jurisdiction under Section 482 of the CrPC or Article 226 of the Constitution 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/registration of the case as well as the materials collected in the course of investigation....”

9. Perusal of the aforesaid judgements passed by the Hon'ble Supreme Court, it is ascertained that the issue involved in all the matters was as to whether under the facts and circumstances of the particular case, F.I.R. in criminal proceeding could be quashed or not. The Apex Court replied in the affirmative. It is no longer *res integra* that even under Article 226 of the Constitution of India, the Constitutional Court can decide the question as to whether the F.I.R. and consequent criminal proceeding is maintainable in the touchstone of the parameters laid down in Bhajan Lal's case.



10. In the instant case, however, the petitioners have not approached for quashment of criminal case. Complaint Case No. 967 of 2022 was transferred to the Court of learned Judicial Magistrate, 1st Class, Gaya for cross-examination of the complainant and the witnesses for issuance of process under Section 204 of the Cr.P.C.

11. The learned Magistrate on cross-examination of the complainant and six other witnesses found that there is sufficient ground for further proceeding in the said complaint case and issued process against the petitioners.

12. It is alleged on behalf of the petitioners that without receiving service report of summons, the learned Magistrate issued bailable warrant and thereafter non-bailable warrant and finally process under Section 482 of the Cr.P.C. The order of issuance of process of summons or warrant of arrest and the process under Section 82 Cr.P.C. are judicial orders.

13. It is held by the Hon'ble Supreme Court in *Jogendrasinhji Vijay Singhji v. State of Gujarat & Ors.*, reported in *(2015) 9 SCC 1* that writ petition challenging order of a Tribunal or authority cannot always be regarded for all purposes to be under Article 227 of the Constitution. Article 226 of the Constitution confers a power of High Court to issue writs,



orders or directions mentioned therein for the enforcement of the rights conferred by Part-III or for any other purpose. This is neither an appeal nor revisional jurisdiction of the High Court. The High Court in exercise of its power under Article 226 of the Constitution of India exercise original jurisdiction though the said jurisdiction shall not be confused with the ordinary civil jurisdiction of the High Court. This jurisdiction, though originally in character as contrasted with its appellate and revisional jurisdictions, is exercisable throughout the territories in relation to which it exercises jurisdiction and may, for convenience, be described as extraordinary original jurisdiction. If that be so, it cannot be contended that a petition under Article 226 of the Constitution is a continuation of the proceedings under the Act concerned.

14. In *Radhey Shyam & Anr. v. Chhabi Nath & Ors.*, reported in *(2015) 5 SCC 423*, a three-Judges Bench of the Hon'ble Supreme Court held that a judicial order passed by Civil Court is not amenable to writ jurisdiction under Article 226 of the Constitution of India.

15. In a subsequent decision in *State of Jharkhand v. Surendra Kumar Srivastava & Ors.*, reported in *(2019) 4 SCC 214*, the Hon'ble Supreme Court has taken the same view.



16. In *Neelam Manmohan Attavar v. Manmohan Attavar (dead) through legal representatives*, reported in *(2021) 16 SCC 536*, the Apex Court held that writ challenging judgement delivered by Single Judge of the High Court in exercise of criminal revisional jurisdiction is not maintainable before the Supreme Court as alternative remedies are available before the High Court as well as Supreme Court.

17. The same view was taken by High Court of Jammu and Kashmir and Ladakh, in the case of *Abdul Majeed Ganie v. Abdul Rahim Bhat & Ors.*, reported in *2022 SCC OnLine J&K 728*.

18. In the instant case, the petitioners has not come forward to quash the criminal proceeding. On the other hand, the petitioners prayed for setting aside an order passed by the learned Judicial Magistrate issuing process under Section 82 of the Cr.P.C. and direction upon the police officer to remove the lock of the house of the petitioners.

19. The impugned orders, in considered view of this Court is assailable in revision either before the learned Sessions Judge or in this Court. The writ petition against the aforesaid orders is not maintainable.

20. For the reasons stated above, this Court does not



find any ground to grant relief to the petitioners in the instant writ petition.

21.With the aforesaid direction, the instant petition stands dismissed, on contest, however, without costs.

(Bibek Chaudhuri, J)

skm/-

AFR/NAFR	AFR
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