

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No. 64 of 2024

Arising Out of PS. Case No.-425 Year-2023 Thana- BIHTA District- Patna

Subhash Prasad Yadav, Son Of Late Shiv Prasad Yadav R/O Mohalla-
Vidhayak Colony, Kautilya Nagar, P.S.- Hawaii Adda, Dist.- Patna

... .. Petitioner/s

Versus

1. The State of Bihar Through The Home Secretary, Government Of Bihar Patna
2. The Director General of Police, Bihar Patna
3. The Senior Superintendent of Police, Bihar Patna
4. The Deputy Superintendent of Police, Danapur, Patna Bihar
5. The Station House Officer, Bihta Police Station, Dist.- Patna Bihar
6. Bhim Verma Sonof Suresh Verma R/O Bela, Post- Neura, P.S.- Bihta, Dist.- Patna

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Madhumay Madhup, Advocate Mr. Nishikant, Advocate Mr. Anand Kumar Tiwari, Advocate Mr. Aditya Raj, Advocate
For the Respondent/s	:	Mr. Shiv Kumar, AC to G.A. - 3

CORAM: HONOURABLE MR. JUSTICE BIBEK CHAUDHURI
ORAL JUDGMENT

Date : 15-03-2024

1. The Petitioner has invoked the extraordinary jurisdiction of this Court under Article 226 of the Constitution of India for the following reliefs :

(i) For issuance of appropriate Writ / Writs, direction / directions or orders / order, quashing the Bihta P. S. Case No. 425 of 2023, dated 04.05.2023, registered under Sections 447, 448, 341, 342, 323, 384, 386, 406, 420,



506 and 120B of the Indian Penal Code on the basis of written application given by one person, namely, Bhim Verma, against the above-named Petitioner.

(ii) For issuance of appropriate Writ / Writs, direction / directions or orders / order, directing the Respondents that during the pendency of the present writ petition, the Respondents may be restrained from taking any coercive step in pursuance of the proceeding in Bihta P. S. Case No. 425 of 2023, dated 04.05.2023.

(iii) For any other relief / reliefs, which the Hon'ble Court may grant in general interest, that may be deemed appropriate and necessary in this case.

2. It is submitted by the Petitioner that the Bihta P. S. Case No. 425 of 2023, dated 4th of May 2023 under Sections 447, 448, 341, 342, 323, 384, 386, 406, 420, 506 and 120B of the Indian Penal Code was registered on the basis of a written complaint submitted by one Bhim Verma, Respondent No. 6 herein, on the allegation that the father of the Informant entered into an agreement for a tenure of three months with one person, namely, Arun Kumar @ Munshi @ Mukhiya for sale of a piece of land. However, the said Arun Kumar @ Munshi @ Mukhiya did not pay the entire amount and the period of agreement had



expired. Thereafter, the mother of the Informant, namely, Meena Devi executed a deed of conveyance in respect of plots of land, bearing Plot No. 2296, corresponding to Khata No. 26 and Plot No. 2299, corresponding to Khata No. 28, measuring about 7 khatas in favour of the wife of the present Petitioner at a consideration price of Rs. 96 Lakhs. Prior to the sale, the Petitioner was duly informed about the agreement with the said Arun Kumar executed by Ramanand Rai but he had chosen to purchase the said land. On 27th February, 2023, the Petitioner called both the Informant and Arun Kumar @ Munshi @ Mukhiya at his residence. The Informant, accordingly, reached the house of the Petitioner. Then the Petitioner allegedly told the Informant to return entire money and he wished not to transfer his land, sold to his wife to which Arun Kumar @ Munshi @ Mukhiya also agreed. It is also alleged that the Petitioner threatened and intimidated the Informant, taking the mother and brother of the Informant hostage and sent the Informant to bring Rs. 60. 50 Lakhs from village Arap. The said money was duly handed over to him. The Informant was further threatened of being killed by the Petitioner. Upon being asked for receipt of payment Rs. 60. 50 Lakhs, the Petitioner also threatened the Informant saying the Informant that if he reveals anything to



third person, he will face dire consequences. The incident took place in presence of some witnesses. It is also alleged that the Informant told Arun Kumar @ Munshi @ Mukhiya that he should take back the consideration amount of the agreement, upon which Arun Kumar @ Munshi @ Mukhiya told the Informant to hand over the entire money to Subhash Prasad Yadav. The FIR further discloses that Arun Kumar @ Munshi @ Mukhiya brought another Arun Kumar, Son of Satyadev Singh of Sikandarpur within Police Station Bihta and claimed to have been sent by Subhash Prasad Yadav, who also asked the Informant to transfer Rs. 30 Lakhs into the account of Arun Kumar. The informant was persuaded by Arun Kumar of Sikandarpur to sign a document acknowledging receipt of Rs. 1 crore, and then only Arun Kumar of Sikandarpur would get Rs. 60. 50 Lakhs deposited in the account of Arun Kumar @ Munshi @ Mukhiya. The informant due to fear put his signature on a stamp paper. Thereafter, Arun Kumar @ Munshi @ Mukhiya forcibly entered into the informant's house, demanded money and threatened to kill the Informant and his family. The informant immediately called police, upon which Arun Kumar @ Munshi @ Mukhiya was arrested and brought to Neura Police Station on 16th of August, 2022, but no FIR was



registered. On 6th of June, 2022, the Informant met the Chief Minister and submitted an application, after which, the Chief Minister of the State of Bihar directed the District Magistrate, Patna to inquire into the matter. The Informant also submitted few audio and video recordings, but despite giving all such evidences, the Police did not file any FIR against the Petitioner as well as Arun Kumar @ Munshi @ Mukhiya and others. Only on 4th of May, 2022, the Informant had a meeting with the District Magistrate, Patna and he asked him to meet the Senior Superintendent of Police. Only then, his FIR was accepted against former Sarpanch, Pankaj Singh, Arjun Rai, Arun Kumar @ Munshi @ Mukhiya, Renu Devi, Subhas Prashad Yadav and Randhir Yadav.

3. The Petitioner also submitted that previously he was made accused in respect of the following cases:-

(i) Rupaspur P. S. Case No. 300 of 2023, registered under Sections 341, 323, 498-A, 504, 506 and 34 of the Indian Penal Code.

(ii) Shastri Nagar P. S. Case No. 458 of 2009, registered under Sections 447, 341, 342, 504, 511 of the Indian Penal Code and Sections 25 and 26 of the Arms Act, 1959.

(iii) Complaint Case No. 2267



of 2012, registered under Sections 342, 323, 504 and 34 of the Indian Penal Code.

(iv) Mir Ganj P. S. Case No. 175 of 2012, registered under Sections 341, 323, 354, 504 and 34 of the Indian Penal Code.

4. It is contended on behalf of the Petitioner that from bare perusal of the FIR, It would appear that the said FIR is a piece of mischief registered against several persons including the present Petitioner, his wife and son at the behest of the Informant who himself is guilty of committing the fraud with regard to property in question. It is also stated that the transaction relating to sale of land was executed on 26th of February, 2021. It is alleged by the Informant that on 27th February, 2021, the Petitioner had kept the mother and brother of the Informant in hostage, but on that date, the mother and the brother of the Petitioner were traveling to Ahmedabad by a Spice Jet flight. Therefore, all such allegations are false and concocted to the knowledge of the Petitioner. The Petitioner has also sent a notice to the Informant of defamation on 27th May 2022.

5. On the above facts, it is pleaded by the Petitioner that the FIR in question contains false and frivolous stories against the Petitioner relating to transaction in respect of sale of



a piece of land, which was executed on 26th February, 2021.

6. The learned Advocate for the Petitioner attacks the veracity of Bhita P.S. Case No. 425 of 2023, dated 4th of May 2023, on the ground of inordinate delay. In support of his contention, he refers to a judgment of the Hon'ble Supreme Court in the case of *Manoj Kumar Sharma and Ors. vs. State of Chhattisgarh & Anr.*, reported in (2016) 9 SCC 1.

7. What happened in the above-mentioned reported decision is that a bride committed suicide by hanging her in matrimonial home within five months of marriage. Inquiry was conducted by police under Section 174 of the Code of Criminal Procedure, upon receipt of information regarding death offense. No offense was found to have been committed. The report of inquiry under Section 174 of the Cr.P.C was forwarded to the Sub-Divisional Magistrate, which was accepted and the case was finally closed. After about five years, on the basis of anonymous letter received by the brother of the deceased, wherein it was stated that the death of his sister was a planned murder, the father of the deceased registered FIR under Sections 304B and 498A of the IPC against the husband and other matrimonial relations of the deceased. The Hon'ble Supreme Court, while quashing the FIR, held that to invoke inherent



jurisdiction under Sections 482 Cr.P.C., the High Court must be fully satisfied that material produced on record is based on sound, justifiable and reasonable facts. In the aforesaid report, allegations made in the FTR are inherently improbable and evidence collected in support of the same do not disclose commission of any offense and make out a case against the appellants. Malicious prosecution was instituted by the brother of the deceased after a period of five years and that too on the basis of anonymous letters. There was no accusation against the appellants before filing of FIR. Allegations are vague and do not warrant continuation of criminal proceedings against the appellant.

8. On the above finding, it was held by the Hon'ble Supreme Court that the High Court failed to apply the test whether uncontroverted allegations, as made, *prima facie*, established the offense. The Hon'ble Supreme Court on due consideration of entire facts and circumstances quashed the FIR.

9. It is needless to say that for quashing an FIR under Article 226 of the Constitution of India, parameters of consideration is similar with that of the application under Section 482 of the Cr.P.C. If the FRI is found to be maliciously instituted or on *prima facie* reading, it does not disclose any



offense against the Petitioner, the constitutional Court, in exercising its extraordinary jurisdiction can quash the FIR by issuance of Writ of Certiorari.

10. The learned Advocate for the Petitioner also refers to another decision of the Hon'ble Supreme Court in the case of *Mahmood Ali vs. State of U.P.* reported in *AIR ONLINE 2023 SC 602*. In this report the Hon'ble Supreme Court was pleased to discuss the scope of Article 226 of the Constitution and Section 482 of the Code of Criminal Procedure, when it comes to the question of quashing of FIR. It is held by the Hon'ble Supreme Court that whenever an accused comes before the Court invoking either the inherent powers under Section 482 of the Cr.P.C. or extraordinary jurisdiction under Article 226 of the Constitution to get 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. 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 Cr.P.C. 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 initiation/registration of the case as well as the material collected in the course of investigation.

11. In the instant case, it is not in dispute that a deed of sale was executed on 26th of February, 2021 by the Informant in favour of the wife of the Petitioner. The allegation against the Informant is that after execution of sale-deed, he put illegal pressure to the Petitioner to handover the consideration price saying that he is not willing to purchase the property and



he would return the land to the Informant. The Informant returned the entire consideration money but the Petitioner did not return the land. It is also not in dispute that the FIR was registered vide Bihta P.S. Case No. 425 of 2023 on 4th May, 2023, while the registered deed of sale was executed on 26th of February 2021. If the Informant was threatened, extorted and forced to pay illegally the consideration of money back to the Petitioner, he could have taken recourse of Section 156 (3) of the Cr.P.C. at the earliest when the police refused to accept the FIR from the Informant. Moreover, on perusal of the entire FIR closely, it appears to this Court that the dispute is essentially civil in nature. If the averment of the Informant in the FIR is accepted to be true, the pith and substance of the FIR is that the Petitioner induced the Informant to sell out his land at a consideration price of Rs. 96 lakhs. Subsequently, the Petitioner took away the said consideration money with the help of others on condition that he would return the land. But he did not return the land. The Petitioner is under obligation to return the subject land in favour of the Informant after taking back the consideration money.

12. Therefore, the real issue involved between the parties is as to whether without paying consideration money to



the Informant, can a sale be completed or not. This issue is essentially civil in nature and this question can only be decided by a Civil Court of competent jurisdiction.

13. For the reasons stated above, this Court does not find any ground for rejection of the writ petition.

14. Accordingly, the writ petition is allowed.

15. The criminal proceeding, being Bihta P.S. Case No. 425 of 2023, dated 4th of May, 2023, is quashed.

(Bibek Chaudhuri, J)

uttam/-skm

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