

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.44107 of 2015**

Arising Out of PS. Case No.-1499 Year-2012 Thana- MUZZFARPUR COMPLAINT CASE
District- Muzaffarpur

Arvind Kumar Singh @ Chunchun Singh S/o Late Ishwar Narayan Singh @
Bachcha Singh R/o village - Laskaripur, P.O. Kalwari, P.S. Kanti, District -
Muzaffarpur

... .. Petitioner/s

Versus

1. State of Bihar and Anr
2. Urmila Devi W/o Late Rajendra Paswan R/o village - Laskaripur, P.O.
Kalwari, P.S. Kanti, District - Muzaffarpur

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Rohit Singh, Advocate
Mr. Vijay Shanker Tiwari, Advocate
For the Opposite Party/s : Mr. Manindra Kishore, Advocate
Mr. Santosh Kumar Jha, Advocate
Mr. Sunil Kumar Pandey App

**CORAM: HONOURABLE MR. JUSTICE CHANDRA SHEKHAR JHA
ORAL JUDGMENT**

Date : 28-02-2024

1. Heard learned counsel appearing for the petitioner, learned counsel appearing for the opposite party no. 2 and learned APP appearing for the State.

2. The present petition is preferred for quashing of the order dated 12.02.2015 passed by the Learned Court of Sessions Judge, Muzaffarpur in Criminal Revision No. 73/2014, whereby the learned Sessions Judge has dismissed the revision application of the petitioner, which was directed against the order dated 07.02.2014 passed by the learned Judicial Magistrate, 1st Class, Muzaffarpur in connection with Complaint



Case No. 1499/2012 (Tr. No. 3957/2014), whereby summons was directed to be issued against the petitioner under after finding a *prima facie* case for offences punishable under Sections 447, 323 and 341 of the Indian Penal Code.

3. The prosecution story in brief, instituted on the basis of the complaint petition dated 1.09.2012 by the complainant - Urmila Devi, is to the effect that the complainant is a widow, whose land is situated in Village- Laskaripur, bearing Khata No. 05, Khesra 1466, Area 10 decimals, which has been grabbed by the petitioner and he has been repeatedly pressurizing the complainant to get the land executed in his favour and has been threatening the complainant to kill her, if she does not do the same. It is then alleged that the complainant has made a complaint before the Inspector General of Police, Tirhut Zone, Muzaffarpur and the same was enquired into by the Inspector General of Police, which came within the knowledge of the petitioner and on the date of occurrence, when the complainant went on her land alongwith the witness no. 1, then all the accused persons began abusing and assaulting the complainant and then the petitioner threatened the complainant for having made a complaint before the I.G. of Police and threatened the complainant to get the land executed in his name,



or else she would be killed, but on the intervention of the witnesses, the complainant could be saved. On the basis of the aforesaid allegations, Complaint Case No. 1499/2012 was instituted against the petitioner and other accused persons.

4. After going through material available on record and taking note of the statements of witnesses, learned trial court took cognizance for the offences punishable under Sections 447, 323 and 341 of the Indian Penal Code vide order dated 07.02.2014. Against said order of cognizance, petitioner preferred a revision application before the learned Court of Sessions Judge, Muzaffarpur, which was dismissed vide order dated 12.02.2015, as passed in Cr. Revision No. 73/2014, which is the impugned order for present proceeding.

5. Learned counsel appearing for the petitioner submitted that the present case is purely arises out of civil disputes, where first of all a complaint case was filed before learned C.J.M., Hajipur in year 2009 which has been registered as Complaint Case No. 498/2009, which upon enquiry dismissed under Section 203 of the Code of Criminal Procedure (in short "Cr.P.C."). Subsequent to said dismissal, O.P. No. 2 lodged a police case almost narrating the same version as raised earlier through complaint petition, where FIR was lodged with Hajipur



Police Station and same has been registered as Hajipur P.S. Case No. 740/2009, where police after investigation submitted final form by exonerating petitioner and after a gap of three years a protest petition was filed, which was also dismissed, as a matter of third attempt the present complaint case was filed where the cognizance as aforesaid was taken by learned Judicial Magistrate against which a revision petition was preferred but same was dismissed by the learned Sessions Judge, Muzaffarpur as submitted above.

6. It is further submitted by learned counsel that O.P. No. 2 constructed a house in part under the Indira Awas Yojana over the land in issue but left the said house abandoned which flushed away due to heavy rain. It is also submitted that C.O. during investigation did not find any house constructed over disputed land. While concluding the argument, it is submitted that the title of land is not disputed but as some temporary hatchment was provided by grandfather of petitioner to father-in-law of O.P. No. 2 for doing agricultural activities as a labour, the present false case was lodged just to grab the land.

7. Learned counsel while arguing over the matter relied upon the report of Hon'ble Supreme Court as reported in the matter of *Usha Chakraborty and Another vs. State of West*



Bengal and Another reported in **2023 SCC OnLine SC 90**.

8. Learned counsel appearing for the O.P. No. 2, while opposing this application submitted that the presence of constructed house is an admitted position. It is also pointed out that O.P. No. 2 was assaulted during the occurrence by petitioner and others but fairly submitted that the nature of the dispute between the parties is of civil.

9. It would be apposite to reproduce Para-12 of legal report of Hon'ble Supreme Court as reported in the matter of ***Paramjeet Batra vs. State of Uttarakhand and Others*** reported in **(2013) 11 SCC 673**, which is as under:-

“12. While exercising its jurisdiction under Section 482 of the Code 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 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 criminal proceedings to prevent abuse of process of court.”

10. It would be further apposite to refer the legal



report of Hon'ble Supreme Court as reported in the matter of ***Kapil Aggarwal and Others vs. Sanjay Sharma and Others*** reported in ***(2021) 5 SCC 524***, where it was held by Hon'ble Supreme Court that Section 482 is designed to achieve the purpose of ensuring that criminal proceedings are not permitted to generate into weapons of harassment.

11. It would be appropriate to reproduce paragraph no. 102 of the Apex Court decision in the case of ***State of Haryana and Others vs. Bhajan Lal and Others*** reported in ***1992 Supp (1) Supreme Court Cases 335***, which reads as under:

“102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined



and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

(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 informant 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 nay 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 persons 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.”

12. It would be apposite to reproduce paragraph 10 of the legal report of Hon’ble Supreme Court in the matter of ***Usha Chakraborty (supra)***, which is as under:-

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 above of the process by Section 482 Cr. P.C.

ix) The functions of the judiciary and the police complementary, not overlapping; are

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."

13. From the scanning of aforesaid factual and legal submissions and also by taking note of fact, it transpires that the crux of dispute between the parties is purely civil for which O.P. No. 2 earlier lodged a complaint case in year 2009 which was dismissed, again lodged a police case where final form was submitted against the petitioner, the protest petition was also dismissed by learned Judicial Magistrate whereupon third time the present complaint was filed where the cognizance was taken as discussed above. Conduct of O.P. No. 2 is suggesting ulterior motive for wrecking vengeance with a view to spite petitioner due to private and personal grudge even the narration as set out in complaint petition on its face doubts a



prima facie case for the offence as alleged.

14. Accordingly, by taking note of aforesaid factual and legal submissions and by importing guiding note from aforesaid legal ratio and further taking note of guidelines nos. 1 and 7 of ***Bhajan Lal (supra)***, the present application stands allowed.

15. Hence, the impugned order dated 12.02.2015 passed in Criminal Revision No. 73 of 2014, by the learned Court of Sessions Judge, Muzaffarpur with all its consequential proceedings are quashed and set aside *qua* petitioner.

16. TCR (Trial Court Records), if any, be returned to learned trial court alongwith the copy of this judgment.

(Chandra Shekhar Jha, J)

Archana/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	29.02.2024
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