IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.17078 of 2020

Arising Out of PS. Case No.-2065 Year-2008 Thana- BHAGALPUR COMPLAINT CASE District- Bhagalpur

==========

Deepak Kumar @ Deepak Sah, S/O Surendra Prasad Sah, R/O Lahappatti, P.S.- Kotwali, Distt- Bhagalpur.

... ... Petitioner

Versus

1. The State of Bihar
2. Prabhash Chandra Sah, S/O Late Hari Prasad Sah, Resident Of N.C. Chatterji Road, Mundichak, P.S.- Tilkamanjhi, Distt- Bhagalpur.

... ... Opposite Party

==========

Appearance :

For the Petitioner/s	:	Mr.Praveen Kumar, Advocate
For the State	:	Mr.Jai Narain Thakur, APP
For the O.P. No. 2	:	Mr.Arvind Kumar, Advocate Mrs.Pratima Kumari, Advocate Mr.S Azeem, Advocate Mr.Akshay Lal Pandit, Advocate

==========

CORAM: HONOURABLE MR. JUSTICE CHANDRA SHEKHAR JHA

ORAL JUDGMENT

Date : 04-03-2025

Heard learned counsel appearing on behalf of the petitioner and learned A.P.P. for the State.

2. The present application has been preferred for quashing of order taking cognizance dated 22.06.2009 passed in connection with Kotwali Complaint Case No. 2065(C) of 2008 by the learned Judicial Magistrate - 1st Class, Bhagalpur, by which cognizance has been taken against the petitioner and others for the offfences under Section

323/379/34 of the Indian Penal Code (in short the 'I.P.C.').

3. A Notice was issued to opposite party no. 2/ complainant namely, Prabhash Chandra Sah, which was duly served upon him and was represented before this Court through advocate of his choice.

4. Precisely, the case of the complainant as it appears from the narration of his complaint, that he had been carrying out his business of fruits and coconuts for many years in his shop situated in Girdhari Sah Lane, Sujaganj, Bhagalpur, which was purchased by him with his three brothers through a registered sale deed in the year 1999 from Hirendra Prasad Sah and Mahendra Prasad Sah. It further appears from narration of complaint that petitioner being one of the influential and rich person of the locality and being owner of Girdhari Sah Hatia, with intention to grab his shop, first offered O.P. No.2 to sale the shop but when he refused to do so, petitioner along with his associates began to harass him and in furtherance of that began to dig a trench adjacent to his shop as to get it demolished. It was further alleged that when the trench was dug upto depth of 10 ft., having

apprehension of demolition of his shop building, he informed S.H.O. Kotwali and S.S.P. Bhagalpur in writing, but no action was taken by the police.

5. It is further alleged that continuing harassment as to achieve the desired object to grab the shop/building of the complainant/O.P. No. 2, petitioner on 10.11.2008 at about 11:00 p.m. along with Rajesh Madrasi, Javed Khan, Mahadeo Sah and Jagdish Yadav armed with weapons entered into the shop of O.P. No. 2. They were also accompanied by several labourers to whom petitioner ordered to throw out the goods of O.P. No. 2 from his shop, and in compliance of his said order co-accused Rajesh Madrasi, Javed Khan, Mahadeo Sah and Jagdish Yadav started to loot the goods and loaded it to a tractor. Goods were mainly consisting of five bags of coconuts, one petromax,one cash box, one door and one iron grill etc. and while leaving the alleged place threatened to complainant/O.P. No. 2 that he has no option but to sale the shop to him. While concluding the allegation, it was stated that the looted goods was worth of several lakhs of rupees. It was also alleged that during course of occurrence his shop

was finally demolished. The complainant/O.P. No. 2 informed the police regarding the said occurrence, but no help was extended to him by police administration, failing which the present complaint case was filed on 13.11.2008 before learned C.J.M., Bhagalpur.

6. It is submitted by learned counsel appearing on behalf of the petitioner that the dispute between the parties are of civil nature and same was given a criminal colour to settle the civil dispute.

7. It is pointed out by learned counsel for petitioner that regarding same occurrence O.P. No. 2 lodged a F.I.R. which was registered as Kotwali P.S. Case No. 755/2008 dated 13.11.2008 against the petitioner and others for the offences committed under Section 341, 323, 427, 447, 385 and 34 of the I.P.C., where after investigation police submitted final form/charge-sheet through charge-sheet No. 1139/2009 dated 31.12.2009 and did not sent up this petitioner for facing trial by exonerating him, supplying the reason that during investigation the dispute was found civil in nature.

8. It is pointed out that aforesaid final form was also accepted by learned CJM, Bhagalpur, but O.P. No. 2 neither filed any protest petition nor expressed any grievance against the petitioner before the learned CJM court, and thereafter, for the same occurrence the present criminal complaint case was lodged on 13.11.2008 by aggravating the allegation making occurrence as of dacoity.

9. It is submitted that the present complaint was filed for the offence under Sections 147, 148 & 395 of the I.P.C. where cognizance was taken for the offence under Section 323, 379 & 34 of the I.P.C. It is pointed out that however the complaint in issue not appears supported by affidavit, contrary to settle law in this regard as available through **Priyanka Srivastava and Another v. State of Uttar Pradesh** reported in **(2015) 6 SCC 287.**

10. It is also pointed out that impugned cognizance order is not a reasoned and speaking order and it was passed in very mechanical manner.

11. In support of aforesaid submission, while concluding argument, learned counsel appearing for the

petitioner relied upon the legal reports of Hon'ble Supreme Court as available through **Gulam Mustafa v State of Karnataka [2023 SCC Online SC 603]; Priyanka Srivastava and Another v. State of Uttar Pradesh [(2015) 6 SCC 287]; Babubhai Vs. State of Gujarat & Ors. [(2010 12 SCC 254]** and **Neeharika Infrastructure Pvt. Ltd. v. State of Maharashtra [(2021) 19 SCC 401].**

12. Per contra, learned A.P.P. for the State duly assisted by learned counsel appearing for the opposite party no. 2/complainant, Mr. Arvind Kumar, while opposing the quashing petition, submitted that the land in issue was purchased by O.P. No.2 in the year 1999 through registered sale deed and, therefore, no civil dispute as submitted exist between the parties. It is submitted that the occurrence took place between the parties as petitioner want to grab the shop/building of O.P. No.2, which was adjacent to his market to get it develop further.

13. It is pointed out that the final form in Kotwali P.S. Case No. 755 of 2008, was submitted in connivance with

police personnel as the petitioner is an influential person of the locality. It is submitted that the reason for submitting the charge-sheet as dispute was civil in nature appears completely bad in the eyes of law, as it is the settled position of law that in civil dispute, criminal act cannot be ruled out. It is also submitted that the petitioner never appeared before the court.

14. It is pointed further by learned counsel appearing for opposite party no. 2 that petitioner preferred Cr. Rev. No. 503/2019 on 04.04.2009, before this Court, against impugned order, which is still pending before this Court and thus by pressing the present quashing petition, the petitioner is playing fraud upon the Court.

15. Taking note of aforesaid submission, it is pointed out by learned counsel appearing for the petitioner that in actual O.P. No. 2 is misleading this Court through his counter affidavit, as he is not aware about the progress of Cr. Rev. No. 503/2019. It is submitted in this context that it is true that petitioner filed aforesaid criminal revision against the impugned cognizance order, but same was directed to convert

into a petition under Section 482 Cr.P.C. by this Court, which was converted accordingly vide order dated 05.12.2024 of this Court and subsequently, upon conversion the aforesaid criminal revision was disposed of on 23.01.2025 and, as such, at present only this quashing petition is surviving, challenging the impugned cognizance order.

16. It would be apposite to reproduce the cognizance order dated 22.06.2009 for better understanding of the case, which reads as under:

> "22.06.2009. The Complainant is present. He has been examined on S.A. Two enquiry witnesses have been examined on behalf of complainant.
>
> I have perused the complaint petition as well as S.A. of the complainant and evidences of all enquiry witnesses and have gone through the papers filed by the complainant.
>
> From perusal of the case record I find that a prima-facie case u/s 323/379/34 IPC is made out against the all accused persons named in complaint petition for facing the trial. The complainants directed to file requisite of summons on or before the date fixed. The office clerk directed to issue summons to the accused persons on filing of requisite of summons. Let it be fixed on 24.07.2009 for appearance of the accused persons. (A prima-facie case u/s 323/379/34 IPC is made out) – 22.06.09
>
> Dictated
> Judicial Magistrate,
> 1st Class
> Bhagalpur"

17. It is apparent that for the occurrence dated 10.11.2008, initially one F.I.R. being Kotwali P.S. Case No.

755/2008 dated 13.11.2008 was registered for the offence under Sections 341, 323, 427, 447, 385 & 34 of the I.P.C. and subsequently this complaint case was also registered alleging the occurrence as a dacoity. The crux of allegation appears roaming around land dispute. In F.I.R. No. 755/2008 police submitted charge-sheet which has been also accepted by learned CJM, Bhagalpur. The complaint dated 13.11.2008 also not appears to be supported by affidavit of O.P. No. 2, which appears contrary to the settled legal position as available through **Priyanka Srivastava's case** (supra).

18. It would be apposite to reproduce **para 32 to 34** of the judgments of Hon'ble Apex Court in the case of **Gulam Mustafa's case** (supra) and **para 30** of **Priyanka Srivastava's case** (supra), which reads as under:

> 32. The legal position was also considered in Kamal Shivaji Pokarnekar v. State of Maharashtra, (2019) 14 SCC 350. In Mahendra K C v. State of Karnataka, 2021 SCC OnLine SC 1021, this Court stated:
> "23. … the High Court while exercising under Section 482 of the CrPC to quash the FIR instituted against the second respondent-accused should have applied the following two tests : i) whether the allegations made in the complaint, prima facie constitute an offence; and ii) whether the allegations are so improbable that a prudent man would not arrive at the conclusion that there is sufficient ground to proceed with the complaint."
> 33. We are equally mindful of Arnab Manoranjan Goswami v. State of Maharashtra, (2021) 2 SCC 427, where at

Paragraph 68, it was stated that "… The other end the spectrum is equally important : the recognition by Section 482 of the power inhering in the High Court to prevent the abuse of process or to secure the ends of justice is a valuable safeguard for protecting liberty." We are at one with this comment. A detailed exposition of the law is also forthcoming in **Neeharika Infrastructure Pvt. Ltd. v. State of Maharashtra, 2021 SCC OnLine SC 315**, which we have factored into, while adjudicating the instant *lis*.

34. Insofar and inasmuch as interference in cases involving the SC/ST Act is concerned, we may only point out that a 3-Judge Bench of this Court, in Ramawatar v. State of Madhya Pradesh, 2021 SCC OnLine SC 966, has held that the mere fact that the offence is covered under a 'special statute' would not inhibit this Court or the High Court from exercising their respective powers under Article 142 of the Constitution or Section 482 of the Code, in the terms below:

"15. Ordinarily, when dealing with offences arising out of special statutes such as the SC/ST Act, the Court will be extremely circumspect in its approach. The SC/ST Act has been specifically enacted to deter acts of indignity, humiliation and harassment against members of Scheduled Castes and Scheduled Tribes. The SC/ST Act is also a recognition of the depressing reality that despite undertaking several measures, the Scheduled Castes/Scheduled Tribes continue to be subjected to various atrocities at the hands of upper-castes. The Courts have to be mindful of the fact that the SC/ST Act has been enacted keeping in view the express constitutional safeguards enumerated in Articles 15, 17 and 21 of the Constitution, with a twin-fold objective of protecting the members of these vulnerable communities as well as to provide relief and rehabilitation to the victims of caste-based atrocities.

16. On the other hand, where it appears to the Court that the offence in question, although covered under the SC/ST Act, is primarily civil or private where the alleged offence has not been committed on account of the caste of the victim, or where the continuation of the legal proceedings would be an abuse of the process of law, the Court can exercise its powers to quash the proceedings. On similar lines, when considering a prayer for quashing on the basis of a compromise/settlement, if the Court is satisfied that the underlying objective of the SC/ST Act would not be contravened or diminished even if the felony in question goes

> unpunished, the mere fact that the offence is covered under a 'special statute' would not refrain this Court or the High Court, from exercising their respective powers under Article 142 of the Constitution or Section 482 Cr. P.C."
>
> (emphasis supplied)"

Priyanka Srivastava's case

> **"30.** In our considered opinion, a stage has come in this country where Section 156(3) CrPC applications are to be supported by an affidavit duly sworn by the applicant who seeks the invocation of the jurisdiction of the Magistrate. That apart, in an appropriate case, the learned Magistrate would be well advised to verify the truth and also can verify the veracity of the allegations. This affidavit can make the applicant more responsible. We are compelled to say so as such kind of applications are being filed in a routine manner without taking any responsibility whatsoever only to harass certain persons. That apart, it becomes more disturbing and alarming when one tries to pick up people who are passing orders under a statutory provision which can be challenged under the framework of the said Act or under Article 226 of the Constitution of India. But it cannot be done to take undue advantage in a criminal court as if somebody is determined to settle the scores."

19. It would further be apposite to reproduce **para 15 to 21** of the judgment of Hon'ble Supreme Court as available through **Babubhai's** case (supra), which reads as under:

> **"15.** The Court further observed as under : (*T.T. Antony case* [(2001) 6 SCC 181 : 2001 SCC (Cri) 1048] , SCC p. 200, para 27)
>
> "*27*. A just balance between the fundamental rights of the citizens under Articles 19 and 21 of the Constitution and the expansive power of the police to investigate a cognizable offence has to be struck by the court. There cannot be any controversy that sub-section (8) of Section 173 CrPC empowers the police to make further investigation, obtain further evidence (both oral and documentary) and forward a

further report or reports to the Magistrate. … However, the sweeping power of investigation does not warrant subjecting a citizen each time to fresh investigation by the police in respect of the same incident, giving rise to one or more cognizable offences, consequent upon filing of successive FIRs whether before or after filing the final report under Section 173(2) CrPC. It would clearly be beyond the purview of Sections 154 and 156 CrPC, nay, a case of abuse of the statutory power of investigation in a given case. In our view a case of fresh investigation based on the second or successive FIRs, *not being a counter-case*, filed in connection with the same or connected cognizable offence alleged to have been committed in the course of the same transaction and in respect of which pursuant to the first FIR either investigation is under way or final report under Section 173(2) has been forwarded to the Magistrate, may be a fit case for exercise of power under Section 482 CrPC or under Articles 226/227 of the Constitution."

(emphasis added)

16. In *Upkar Singh* v. *Ved Prakash* [(2004) 13 SCC 292 : 2005 SCC (Cri) 211] , this Court considered the judgment in *T.T. Antony* [(2001) 6 SCC 181 : 2001 SCC (Cri) 1048] and explained that the judgment in the said case does not exclude the registration of a complaint in the nature of *counterclaim* from the purview of the court. What had been laid down by this Court in the aforesaid case is that any further complaint by the same complainant against the same accused, subsequent to the registration of a case, is prohibited under CrPC because an investigation in this regard would have already started and further the complaint against the same accused will amount to an improvement on the facts mentioned in the original complaint, hence, will be prohibited under Section 162 CrPC. However, this rule will not apply to a counterclaim by the accused in the first complaint or on his behalf alleging a different version of the said incident. Thus, in case, there are rival versions in respect of the same episode, the investigating agency would take the same on two different FIRs and investigation can be carried under both of them by the same investigating agency and thus, *filing an FIR pertaining to a counterclaim in respect of the same incident having a different version of events, is permissible*.

17. In *Rameshchandra Nandlal Parikh* v. *State of Gujarat* [(2006) 1 SCC 732 : (2006) 1 SCC (Cri) 481] this Court reconsidered the earlier judgment including *T.T. Antony*

[(2001) 6 SCC 181 : 2001 SCC (Cri) 1048] and held that in case the FIRs are not in respect of the same cognizable offence or the same occurrence giving rise to one or more cognizable offences nor are they alleged to have been committed in the course of the same transaction or the same occurrence as the one alleged in the first FIR, there is no prohibition in accepting the second FIR.

18. In *Nirmal Singh Kahlon* v. *State of Punjab* [(2009) 1 SCC 441 : (2009) 1 SCC (Cri) 523] this Court considered a case where an FIR had already been lodged on 14-6-2002 in respect of the offences committed by individuals. Subsequently, the matter was handed over to the Central Bureau of Investigation (CBI), which during investigation collected huge amount of material and also recorded statements of large number of persons and CBI came to the conclusion that a scam was involved in the selection process of Panchayat Secretaries. The second FIR was lodged by CBI. This Court after appreciating the evidence, came to the conclusion that matter investigated by CBI dealt with a larger conspiracy. Therefore, this investigation has been on a much wider canvass and held that second FIR was permissible and required to be investigated.

19. The Court held as under : (*Nirmal Singh Kahlon case* [(2009) 1 SCC 441 : (2009) 1 SCC (Cri) 523] , SCC pp. 466-67, para 67)

"*67*. The second FIR, in our opinion, would be maintainable not only because there *were different versions but when new discovery is made on factual foundations*. Discoveries may be made by the police authorities at a subsequent stage. Discovery about a larger conspiracy can also surface in another proceeding, as for example, in a case of this nature. If the police authorities did not make a fair investigation and left out conspiracy aspect of the matter from the purview of its investigation, in our opinion, as and when the same surfaced, it was open to the State and/or the High Court to direct investigation in respect of an offence which is *distinct and separate from the one for which the FIR had already been lodged*."

20. Thus, in view of the above, the law on the subject emerges to the effect that an FIR under Section 154 CrPC is a very important document. It is the first information of a cognizable offence recorded by the officer in charge of the police station. It sets the machinery of criminal law in motion

> and marks the commencement of the investigation which ends with the formation of an opinion under Section 169 or 170 CrPC, as the case may be, and forwarding of a police report under Section 173 CrPC. Thus, it is quite possible that more than one piece of information be given to the police officer in charge of the police station in respect of the same incident involving one or more than one cognizable offences. In such a case, he need not enter each piece of information in the diary. All other information given orally or in writing after the commencement of the investigation into the facts mentioned in the first information report will be statements falling under Section 162 CrPC.
>
> **21.** In such a case the court has to examine the facts and circumstances giving rise to both the FIRs and the test of sameness is to be applied to find out whether both the FIRs relate to the same incident in respect of the same occurrence or are in regard to the incidents which are two or more parts of the same transaction. If the answer is in the affirmative, the second FIR is liable to be quashed. However, in case, the contrary is proved, where the version in the second FIR is different and they are in respect of the two different incidents/crimes, the second FIR is permissible. In case in respect of the same incident the accused in the first FIR comes forward with a different version or counterclaim, investigation on both the FIRs has to be conducted."

20. Lastly, it would further be apposite to reproduce **para 10.3** from the judgment of Hon'ble Supreme Court as available through **Neeharika's case** (supra), which reads as under:

> **10.3.** Then comes the celebrated decision of this Court in ***Bhajan Lal*** **[*State of Haryana* v. *Bhajan Lal*, 1992 Supp (1) SCC 335 : 1992 SCC (Cri) 426]** . In the said decision, this Court considered in detail the scope of the High Court powers under Section 482CrPC and/or Article 226 of the Constitution of India to quash the FIR and referred to several judicial precedents and held that the High Court should not embark upon an inquiry into the merits and demerits of the allegations and quash the

proceedings without allowing the investigating agency to complete its task. At the same time, this Court identified the following cases in which FIR/complaint can be quashed:

"*102.* *(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 Act concerned (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 Act concerned, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fides 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."

21. Upon perusal of record, it appears that

complainant himself, on court question during enquiry, stated that petitioner encroached his land but he did not file civil suit. The facts of the alleged occurrence as stated by complainant on S.A. not appears supported by other enquiry witnesses *prima-facie qua* theft. On the point of assault, there is also contrary statement as complainant himself stated that on the order of petitioner, assault was made by others, whereas other enquiry witnesses stated that this petitioner assaulted complainant, which was negated prima-facie by complainant himself while making his statement on oath. From perusal of record, it also transpires that the dispute appears *prima-facie* land dispute mainly related with demarcation caused by boundary which said to be demolished by this petitioner. Complaint petition also not appears supported by affidavit.

22. In the background of the facts having previous enmity *qua* land dispute, oblique and ulterior motive cannot be ruled out. Hence, the impugned order *qua* petitioner dated 22.06.2009 as passed by learned Judicial Magistrate - 1st Class, Bhagalpur in connection with Complaint Case No. 2065(C) of 2008, stands quashed/set-aside by taking a

guiding legal note from aforesaid decisions of Hon'ble Apex Court.

23. Accordingly, this application stands allowed.

24. Let a copy of this judgment be sent to learned trial court forthwith.

(Chandra Shekhar Jha, J)

Rajeev/-

AFR/NAFR	**AFR**
CAV DATE	**31.01.2025**
Uploading Date	**04.03.2025**
Transmission Date	**04.03.2025**