

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.20590 of 2016

Arising Out of PS. Case No.-1512 Year-2014 Thana- PATNA COMPLAINT CASE District-
Patna

=====

Abhishek Kumar, S/o Sri Braj Kishore Prasad, resident of Advocate Colony,
Gola Road, P.S.- Rupaspur, District- Patna.

... .. Petitioner/s

Versus

1. The State of Bihar.
2. Monu, S/o Dharnidhar Mishra, resident of Ward No. 37, Advocate Colony,
Gola Road, P.S.- Rupaspur, District- Patna.

... .. Opposite Party/s

=====

Appearance :

For the Petitioner/s : Mr. Rajesh Kumar, Adv.

For the O.P. No. 2 : Mr. Dharnidhar Mishra, Adv.

For the State : Md. Aslam Ansari, APP

=====

CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR

ORAL JUDGMENT & ORDER

Date : 17-03-2021

This application has been filed on behalf of the petitioner for quashing the order dated 12.08.2015 passed by the learned Judicial Magistrate-Ist Class, Danapur in Complaint Case No. 1512(C) of 2014, whereby cognizance has been taken against him under Sections 341, 323, 379 and 452 of the Indian Penal Code (*in short*



the I.P.C.).

It has been alleged by opposite party No. 2, the complainant, that the petitioner is his neighbour, who is the son of an Advocate of the Patna High Court. The father of the complainant/opposite party No. 2 also is a practicing Advocate of this Court. It has been alleged that there was a dispute between them regarding measurement of land to demarcate their respective boundaries and which dispute was pending adjudication before the L.R.D.C., Danapur in Land Settlement Case No. 111 of 2012-13.

In the complaint petition, it has further been alleged that the petitioner and his father had earlier lodged Rupaspur P.S. Case No. 119 of 2014 against opposite party No. 2 in which he was granted anticipatory bail till 26.10.2014. However, in the meantime, the petitioner and his father are alleged to have got another case lodged against the opposite party No. 2 and his brother *vide* Rupaspur P.S. Case No. 204 of 2014 on 09.10.2014. The allegation is that acting with unusual promptitude, which



could not have been possible without the active assistance and collusion of the petitioner and his father, the police came to arrest him on 10.10.2014 at about two O'clock in the night. The members of the police party forcibly entered the house of the opposite party No. 2 and took him and his brother away to the police station. The father of the opposite party No. 2 was also assaulted by the members of the police party. The opposite party No. 2 and his brother were kept in the police lock-up and were not provided with any first-aid, even though they were injured because of the assault perpetrated upon them. The opposite party No. 2 and his brother are stated to have been remanded to Phulwari Sharif jail. There is a further accusation of snatching of gold ring from the complainant/opposite party No. 2. Because of the injuries suffered by the opposite party No. 2, he was medically advised for taking rest for 45 to 60 days.

On perusal of the complaint petition and on going through the deposition of the two witnesses offered on behalf of the opposite party No. 2, cognizance has



been taken in this case under Sections 341, 323, 379 and 452 of the I.P.C.

The learned counsel for the petitioner has submitted that the father of the opposite party No. 2, *viz.*, Shri Dharnidhar Mishra had also filed a complaint against the petitioner and his father *vide* Complaint Case No. 1265(C) of 2014 in which also, similar allegations have been levelled and in which, cognizance has been taken under Sections 323, 380 and 452 of the I.P.C.

It has further been submitted on behalf of the petitioner that the occurrence is of 10.10.2014 but the other complaint case, about which reference has been made earlier, was filed on 27.10.2014, *i.e.*, after seventeen days of the occurrence by the father of the opposite party No. 2. In the aforesaid complaint case, the present opposite party No. 2 was one of the witnesses in which during the enquiry, he has not alleged any act of assault on him or anybody else against the petitioner.

There are too many differences and contradictory statements in the contents of the two



complaint petitions, one filed by the opposite party No. 2 and the other by his father, both of which relate to the same occurrence which took place on 10.10.2014.

This Court had taken note of the factual backdrop of this case, especially that the father of the petitioner and the father of the opposite party No. 2 are the practicing Advocates of this Court and are also neighbours in real life. For some reason or the other, some dispute had arisen between them with respect to demarcation of their boundaries, which led to a series of litigation between them.

It is the presumption of the opposite party No. 2 as also his father that the police case against the opposite party No. 2 and his brother has been filed at the instance of the petitioner and his father and that the police party had assaulted opposite party No. 2 and his brother as also his father only because the petitioner and his father had brought them into their collusion.

The purpose for filing such cases was only to settle scores between the two families, which were on very



good terms in the past.

An effort was made by this Court to have the dispute between the parties settled. The parties also evinced keen interest in the dispute being resolved but for some reason or the other, the talks of settlement did not bear any fruit.

Hence, this application was argued on merits.

The father of the petitioner, who is a practicing Advocate of this Court, has given an undertaking that he is willing and desirous of settling the dispute and not prosecuting the opposite party No. 2 or his family members in connection with Rupaspur P.S. Case No. 119 of 2014, provided that the opposite party No. 2 and his father do not proceed against the petitioner or his family members in the two complaint petitions, viz., Complaint Case Nos. 1512(C) of 2014 and 1265(C) of 2014.

Considering the aforesaid stand of the father of the petitioner in Complaint Case No. 1265(C) of 2014, the order of cognizance against the petitioner and his father in that case has been quashed by this Court, which order has



been passed in Cr. Misc. No. 33134 of 2015.

In the aforesaid background, it appears that the accusation has been levelled only to wreak vengeance because of the dispute which had arisen between the two neighbours. Under Section 482 of the Code of Criminal Procedure (*in short the Cr.P.C.*) a provision has been made in the nature of savings of the inherent powers of the Court as a superior Court to make such orders which are necessary for preventing the abuse of the process of Court or to otherwise secure the ends of justice. Times without number, the position with respect to law has been clearly and cogently formulated and summed up with respect to exercise of powers under Section 482 of the Cr.P.C. Broadly speaking, if the High Court is of the view that continuance of any litigation would only be an abuse of the process of the Court, it would be justified in preventing such abuse and exercising the powers under Section 482 of the Cr.P.C. to quash such proceedings. This could also be resorted to in case the Court is of the view that ends of justice would be secured if such an order



is passed.

The invocation of the aforesaid jurisdiction of the Courts to quash the proceedings at the initial stages on the ground that a settlement has been arrived at between the parties may be permissible under certain circumstances but it cannot be treated to be the same as the invocation of the jurisdiction for the purposes of compounding an offence which is governed by the provisions contained in Section 320 of the Cr.P.C.

This has been clarified by the Supreme Court in order to lay at rest the controversy whether provision under Section 482 Cr.P.C. could be invoked even if the offences are non-compoundable.

While exercising such powers under Section 482 Cr.P.C., even though the matter has not fully been settled between the parties or relates to offences which are not compoundable, the Courts are required to give due regard to the nature and gravity of the offence.

In cases of heinous and serious offences involving offences against human body, this provision



ought not be exercised normally.

If the offences which are absolutely private in nature, having no impact upon society, are brought to the notice of the Court and it is found that no useful purpose would be served in keeping the litigation of that kind pending, the invocation and exercise of the power under Section 482 Cr.P.C. would be justified.

[Refer to: State of Haryana & Ors. Vs. Ch. Bhajan Lal & Ors.:AIR 1992 SC 604; Gian Singh Vs. State of Punjab & Anr.:(2012) 10 SCC 303; Narinder Singh & Ors. Vs. State of Punjab & Anr.:(2014) 6 SCC 46; State of Maharashtra Vs. Vikram Anantrai Doshi:(2014) 15 SCC 29; Central Bureau of Investigation Vs. Maninder Singh:(2016) 1 SCC 389; and State of Tamil Nadu Vs. R. Vasanthi Stanley & Ors.:(2016) 1 SCC 376.]

For the reasons afore-stated, the order taking cognizance, dated 12.08.2015, is quashed. All further proceedings in this case, pursuant to the order of cognizance, also stand quashed.

The application stands allowed.

It is expected that the parties shall jettison their differences and would file necessary applications before



the Court below seeking to withdraw such prosecution for their common good.

On the filing of such applications by the parties before the Court below, the Court below shall pass necessary orders in accordance with law, which shall be in consonance with the spirit in which the present order of quashing of the prosecution has been passed.

The application stands disposed off accordingly.

Interlocutory application also stands disposed off.

(Ashutosh Kumar, J)

Praveen-II/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	27.03.2021
Transmission Date	27.03.2021

