

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.1227 of 2017

Arising Out of PS. Case No.-379 Year-2015 Thana- SHASTRINAGAR District- Patna

Lt. Col. Akshaya Kumar Yadav (Rtd.) @ Akshaya Kumar Yadav son of Sri Harigovind Yadav, Resident of Village Anathalaya Road, P.S. Town District Katihar.

... .. Petitioner

Versus

1. The State Of Bihar Through The Principal Secretary, Department Of Home, Govt. Of Bihar, Patna
2. The Senior Superintendent of Police, Patna.
3. The Officer In-Charge, Shastri Nagar Police Station, Patna.
4. Birendra Kumar Yadav son of Sri America Prasad resident of Friends Colony, Opposite Road No. 2, P.S. Shastri Nagar, District Patna.

... .. Respondents

Appearance :

For the Petitioner	:	Mr. Rajesh Ranjan, Advocate Mr. Maria Nazir, Advocate
For the State	:	Mr. Ajay Kumar Sharma, AC to AG
For the respondent no. 4	:	Mr. Sanjay Kumar Ghosarvey, Advocate Mr. Ramesh Gupta, Advocate

CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL ORDER

7 21-07-2022 Heard learned counsel for the petitioner and learned counsel for the informant as also Mr. Ajay Kumar Sharma, learned AC to AG for the State.

The petitioner in the present case is seeking quashing of the First Information Report of Shastri Nagar P.S. Case No. 379 of 2015 under Sections 420, 406, 323 and 324 of the Indian Penal Code.

Learned counsel for the petitioner submits that on a bare perusal of the first information report together with the copy of the complaint petition being Complaint Case No. 222 of



2015 which is the basis of lodging of the FIR it would appear that the opposite party no. 2 moved directly to the court of learned Chief Judicial Magistrate, Patna by filing a complaint petition. In the complaint petition, there was no averment at all that the opposite party no. 2 had approached the jurisdictional police station or had followed the procedure as prescribed under Section 154(3) Cr.P.C. The complaint petition was not even supported by affidavit, still on the oral prayer of learned counsel for the respondent no. 4, the learned CJM forwarded the copy of the complaint case to the SHO of Shastri Nagar Police Station, Patna to investigate the matter. The SHO of the police station registered a first information report.

Relying upon a judgment of the Hon'ble Supreme Court in the case of **Priyanka Srivastava and Anr. vs. State of Uttar Pradesh and Ors.** reported in **(2015) 6 SCC 287**, learned counsel submits that the very lodgment of the first information report would be in the teeth of the judgment of the Hon'ble Apex Court.

It is further submitted that on a bare perusal of the allegations made in the complaint petition, it would appear that both the parties were running a security agency under partnership. The allegation of the complainant is that on the



representation of the petitioner that both of them will work together and from that work they will derive good income, respondent no. 4 had agreed to start the business and at the instance of the petitioner he had invested a sum of Rs.12 lakhs as capital. It is further alleged that during the continuance of the business, the respondent no. 4 was not given his due share and the petitioner was always withdrawing more than his due share. In this regard, the respondent no. 4 is said to have requested the petitioner on many occasions but no heed was paid to his request.

It is lastly alleged that on 28.07.2014, the accounting of the security agency was done and the respondent no. 4 was found entitled to receive a sum of Rs.18,80,000/-. It is then alleged that the petitioner promised to return the amount and liquidate the security agency but despite lapse of 3 months time and repeated contact over telephone, the petitioner did not pay the amount. The allegation is that when the respondent no. 4 contacted the petitioner, he was abused and beaten.

Learned counsel submits that the allegation of abuse and beatings is nothing but an ornamental allegation against the petitioner. No such information was ever given to any police station by respondent no. 4. Learned counsel has relied upon the



judgment of the Hon'ble Supreme Court in the case of **State of Haryana vs. Bhajan Lal** reported in **1992 supp. (1) SCC 335 = AIR 1992 SC 604** and **Inder Mohan Goswami & Another Vs. State of Uttaranchal** reported in **(2007) 12 SCC 1**. It is submitted that without adding or subtracting anything out of the complaint petition, it may be easily concluded that a pure and simple civil dispute over sharing of profit in a partnership has been given colour of a criminal proceeding.

On the other hand, learned counsel for the respondent no. 4 has opposed the application. It is his submission that right from the beginning the petitioner had no intention to pay the due amount of the respondent no. 4 and he was acting with an intention to cheat the respondent no. 4 which ultimately resulted in the misappropriation of the huge amount which became due to the respondent no. 4 on final accounting.

It is further submitted that as regards the non-observance of the procedures under Section 154(3) and 156(3) in terms of the judgment of the Hon'ble Supreme Court is concerned, this plea has not been taken by the petitioner specifically in this application.

Learned counsel for the State submits that in the light of the order of the learned CJM, the FIR has been lodged.



Consideration

Having heard learned counsel for the petitioner, learned counsel for the informant-respondent no. 4 and learned counsel for the State as also on perusal of the complaint petition, this Court is of the considered opinion that the FIR has been lodged without following the mandatory requirements of law in terms of the judgment of the Hon'ble Supreme Court in the case of **Priyanka Srivastava and Anr. (supra)**.

The submission of learned counsel for the respondent no. 4 that no such specific plea has been taken in this matter would not impress this Court as it appears that a party to the proceeding may always cite a judgment of the Hon'ble Apex Court and point out the mandatory nature of the requirements as discussed in the said judgment which is to be followed by the informant and the learned court below.

This Court further finds that this point was taken by the petitioner as back as on 07.11.2017, when this Court passed an interim order.

This Court has also perused the complaint petition and finds that both the parties were in a partnership and they were running the business of security agency. It is not the case of the respondent no. 4 that he was not at all paid his remuneration or share. His grievance is that he was not being paid his due share in terms of his capital and labour. So despite not getting his due share



he did not choose to take any steps to realise the money rather continued in business. If this is the only allegation against the petitioner that he was not paying the due share to the respondent no. 4, this would be a case of pure and simple commercial dispute which will be guided by the law on this subject. By no stretch of imagination, it may be said that it will give rise to a criminal proceeding. In the case of **Inder Mohan Goswami & Anr. (supra)** in paragraph '24' to '26' and '29' and '30', the Hon'ble Supreme Court has observed as under:

“24. Inherent powers under Section 482 CrPC though wide have to be exercised sparingly, carefully and with great caution and only when such exercise is justified by the tests specifically laid down in this section itself. Authority of the court exists for the advancement of justice. If any abuse of the process leading to injustice is brought to the notice of the court, then the Court would be justified in preventing injustice by invoking inherent powers in absence of specific provisions in the Statute.

25. Reference to the following cases would reveal that the courts have consistently taken the view that they must use this extraordinary power to prevent injustice and secure the ends of justice. The English courts have also used inherent power to achieve the same objective. It is generally agreed that the Crown Court has inherent power to protect its process from abuse. In *Connelly v. DPP*¹ Lord Devlin stated that where particular criminal proceedings constitute an abuse of process, the court is empowered to refuse to allow the indictment to proceed to trial. Lord Salmon in *DPP v. Humphrys*² stressed the importance of the inherent power when he observed that it is only if the prosecution amounts to an abuse of the process of the court and is oppressive and vexatious that the judge has the power to intervene. He further mentioned that the court's power to prevent such abuse is of great constitutional importance and should be jealously preserved.

1. 1964 AC 1254; (1964) 2 WLR 1145 : (1964) 2 ALL ER 401(HL)
2. 1977 AC 1 ; (1976) 2 WLR 857 : (1976) 2 ALL ER 497 [HL (E)]



26. In *R.P. Kapur v. State of Punjab*³ this Court summarized some categories of cases where inherent power can and should be exercised to quash the proceedings:

(i) where it manifestly appears that there is a legal bar against the institution or continuance of the proceedings;

(ii) where the allegations in the first information report or complaint taken at their face value and accepted in their entirety do not constitute the offence alleged;

(iii) where the allegations constitute an offence, but there is no legal evidence adduced or the evidence adduced clearly or manifestly fails to prove the charge.”

29. In *Chandrapal Singh v. Maharaj Singh*⁵ in a landlord and tenant matter where criminal proceedings had been initiated, this Court observed in para 1 at SCC p.467 as under:

“A frustrated landlord after having met his Waterloo in the hierarchy of civil courts, has further enmeshed the tenant in a frivolous criminal prosecution which prima facie appears to be an abuse of the process of law. The facts when stated are so telling that the further discussion may appear to be superfluous.”

30. The court noticed that the tendency of perjury is very much on the increase. Unless the courts come down heavily upon such persons, the whole judicial process would come to ridicule. The court also observed that chagrined and frustrated litigants should not be permitted to give vent to their frustration by cheaply invoking jurisdiction of the criminal court.”

In the case of **Bhajan Lal (supra)**, the Hon'ble Supreme Court has laid down the category of the cases in which the power for quashing of the FIR may be exercised. The relevant part of which is being quoted hereunder for a ready reference:

3. AIR 1960 SC 866

5. (1982) 2 SCC 466 : 1982 SCC (Cri) 249



“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 extra-ordinary 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 Information Report and other materials, if any, accompanying the F.I.R. 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 F.I.R. 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.”

In the totality of the circumstances, the materials available on the record, this Court is of the considered opinion that further continuation of the criminal proceeding against the petitioner would only be an abuse of the process of the court. In the ends of justice, this Court, therefore, quashes the first information report as well as the subsequent proceeding, if any, against the petitioner.

This application is allowed.

(Rajeev Ranjan Prasad, J)

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Note: The ordersheet duly signed has been attached with the record. However, in view of the present arrangements, during Pandemic period all concerned shall act on the basis of the copy of the order uploaded on the High Court website under the heading 'Judicial Orders Passed During The Pandemic Period'.

