

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.23591 of 2016**

Arising Out of PS. Case No.-529 Year-2015 Thana- VAISALI COMPLAINT CASE District-
Vaishali

Binod Kumar Son of Late Chunnu Sah @ Chunnu Prasad Resident of
Pokhara Gudri Road, P.O. And P.S. - Hajipur Town, District - Vaishali

... .. Petitioner/S

Versus

1. The State of Bihar
2. Sunil Kumar Son of Late Chunnu Prasad Resident of Pokhara Gudri Road,
P.O. And P.S. - Hajipur Town, District - Vaishali

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Rakesh Kumar Soni, Advocate
For the Opposite Party/s : Mr. Kumar Ajit Singh, Advocate
Mr. Akash Kumar Mishra, Advocate
For the State : Mr. Harendra Prasad, APP

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

Date : 02-04-2024

1. The present application preferred for quashing the order of cognizance dated 19-07-2015/20-07-2015 passed by learned Judicial Magistrate Vaishali at Hajipur, in Tr. No.163/15 arising out of Complaint Case No. 529 of 2015, whereby and where under the learned Magistrate took cognizance for offence under sections 323, 379, 384 and 504 of the Indian Penal Code against petitioner.

2. The short facts giving rise to the present



case are that one Sunil Kumar (O.P. No. 2) filed a complaint Case in the Court of learned Chief Judicial Magistrate, Vaishali vide C.A. No. 529/2015 alleging there in that the father of the Opposite party no.2 had made an registered agreement on 18-1-1993 in his life time, in which all the brothers and legal heirs were made parties and accordingly Binod Kumar (petitioner) was appointed for realization of rent as well as maintenance of the Soni Alankar Complex. Shop of said complex was given on rent with consent of all the parties and realized rent would be equally distributed among the parties. It is further alleged that Binod Kumar (petitioner) executed a lease agreement with the L.I.C as well as UCO Bank without consent of other co-sharers and realized rent was not given to complainant till date since 1993. Therefore, on 17-01-2009 younger brother of the complainant served a legal notice to the Branch Manager of the L.I.C. and also served a legal notice to the petitioner no. 2 (since died) on 18-07-2009 and 8-10-



2009 respectively. But even after death of party Amod Kumar (brother) on 02.04.2006, Chunnu Prasad (father) on 12-12-1999 and mother of the complainant on 29-12-2007, the petitioner no.2 went for a fresh agreement of lease with the L.I.C. It is further alleged that the agreement dated 18-01-1999 has already expired between the petitioner No.2 and complainant since some parties have already expired and no fresh agreement has been made with the legal heirs of the deceased.

3. It is further alleged that the complainant also to served a legal notices dated 02-12-14 and 6-1-2015 to the petitioner no.2 and requested to produce the accounts and also to give the dues realized rent money since 1993 and subsequently on 19-2-2015 at 11 A.M. the complainant went to meet the petitioners at the Complex and demanded the share of realized rent, thereupon all the accused persons started to abuse the complainant, whereupon petitioner no. 2 forcibly took his signature on a non judicial stamps paper and a gold



chain worth Rs. 60,000/- was snatched by Neelam Devi (wife of petitioner no.1) during occurrence and after caring of the family members of the complainant his life could be saved. All the accused had a common intention to grab the realized rent money of the complex, which is about 1 (one) crore.

4. Learned counsel appearing for the petitioner submitted that the present criminal case was filed falsely with ulterior motive to create a pressure to settle the partition suit pending before the Court of Civil Judge-I, Hajipur, Vaishali, bearing Partition Suit No. 835/2013. It is submitted that petitioner was authorized by 11 co-sharers of the property alongwith opposite party no.2 through a registered deed of agreement dated 18.01.1993 as to rent out the properties under descriptions to individuals and offices and also to collect rents over there and to distribute equally among co-sharers qua the parties of said agreement. It is submitted that on one said occasion, when one of the



buildings was given on rent to LIC, dispute was arisen and thereafter, opposite party no. 2 being one of the co-sharer filed partition suit. It is submitted that even the allegations of theft and demanding extortion is available against wife of petitioner no. 1, Nilam Devi, who was also one of the co-sharer of the property but she died during the pendency of present petition and accordingly, her name was deleted vide order dated 06.12.2023. While concluding the argument, it is submitted that other co-sharers, who were examined during enquiry did not appear supporting the allegation as raised through complaint petition.

5. In support of his submissions, learned counsel relied upon the legal reports of the 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**.

6. Learned APP duly assisted by learned counsel Mr. Kumar Ajit Singh appearing for O.P. No. 2



while opposing the application fairly conceded about the pending civil cases between the parties.

7. It would be apposite to reproduce relevant Paragraph Nos. 6, 7, 8, 9 and 10 of **Usha Chakraborty case (supra)**, which reads as:-

6. In *Paramjeet Batra v. State of Uttarakhand & Ors.*, this Court held:-

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

7. In *Vesa Holdings Private Limited and Anr. v. State of Kerala and Ors.*, it was held that: -

"13. It is true that a given set of facts may



make out a civil wrong as also a criminal offence and only because a civil remedy may be available to the complainant that itself cannot be a ground to quash a criminal proceeding. The real test is whether the allegations in the complaint disclose the criminal offence of cheating or not. In the present case there is nothing to show that at the very inception there was any intention on behalf of the accused persons to cheat which is a condition precedent for an offence under Section 420 IPC. In our view the complaint does not disclose any criminal offence at all. The criminal proceedings should not be encouraged when it is found to be mala fide or otherwise an abuse of the process of the court. The superior courts while exercising this power should also strive to serve the ends of justice. In our opinion in view of these facts allowing the police investigation to continue would amount to an abuse of the process of the court and the High Court committed an error in refusing to exercise the power under Section 482 of the Criminal Procedure Code to quash the proceedings."

8. In *Kapil Aggarwal and Ors. v. Sanjay Sharma and Ors.*, this Court held that Section 482 is designed to achieve the purpose of ensuring that criminal proceedings are not permitted to generate into weapons of harassment.

9. In the decision in *State of Haryana v. Bhajan Lal*, a two Judge Bench of this Court considered the statutory provisions as also the earlier decisions and held as under: -



(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 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.

10. In *Neeharika Infrastructure Pvt. Ltd. v. State of Maharashtra and Others*, 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 are complementary, not overlapping;

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."

8. It appears from the factual submissions that the present criminal proceeding/complaint was initiated after two years of filing the partition suit no. 835/2013. It also appears that petitioner and opposite party no. 2 are full brothers and co-sharers of the



property in terms of agreement dated 18.01.1993, where opposite party no. 2 duly authorized petitioner to rent out the property described thereto. The opposite party no. 2 had already approached the jurisdictional Civil Court by instituting a civil suit and same is pending and as such the present criminal complaint of opposite party no. 2 is only appearing *prima facie* weapon of harassment against petitioner with ulterior and oblique motive.

9. In view of aforesaid factual background and by taking note of **Usha Chakraborty case (supra)**, the impugned order of taking cognizance dated 19.07.2015/20.07.2015 with all its consequential proceedings, *qua*, petitioner, arising thereof as passed in connection with Tr. No. 163/2015 arising out of Complaint Case No. 529/2015 pending before learned Judicial Magistrate, Vaishali at Hajipur is hereby quashed and set aside.

10. Hence, this application stands allowed.



11. 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	NAFR
CAV DATE	NA
Uploading Date	04.04.2024
Transmission Date	04.04.2024

