

(2023) 09 PAT CK 0030

In the Patna High Court

Case No : Criminal Writ Jurisdiction Case No. 330 Of 2020

Ekanand Yadav

APPELLANT

Vs

State Of Bihar

RESPONDENT

Date of Decision : 14-09-2023

Acts Referred:

Constitution Of India, 1950 — Article 226
Indian Penal Code, 1860 — Section 34, 323, 341, 379, 384, 420, 504, 506
Negotiable Instruments Act, 1881 — Section 138
Code Of Criminal Procedure, 1973 — Section 482

Citation : (2023) 09 PAT CK 0030

Hon'ble Judges : Anil Kumar Sinha, J

Bench : Single Bench

Advocate : Patanjali Rishi, Md. Nadim Seraj, Manoj Kumar

Final Decision : Allowed

Judgement

1. The present writ application has been filed for quashing the First Information Report, bearing Triveniganj Police Station Case No. 29 of 2019, lodged by respondent no. 3 against the petitioners, registered for the offences punishable under Sections 420/341/323/384/379/504/506/34 of the Indian Penal Code.

2. The brief facts, involved in the present case, is that a cheque was issued by respondent no. 3 in favour of petitioner no. 1 towards the settlement of account/ dues, which had accrued in course of business transaction between the two, The cheque issued by the respondent no. 3 got dishonoured when it was produced for its encashment before the bank due to 'insufficient fund'.

3. The petitioner no. 1 served legal notice to respondent no. 3 for dishonour of cheque on 28.04.2018 and thereafter lodged a complaint case, bearing Complaint Case No,. 615 of 2018 on 01.06.2018, under Section 138 of the Negotiable Instruments Act, 1881, and Section 420 of the Indian Penal Code against the respondent no. 3 before the Chief Judicial Magistrate, Deoghar, in which cognizance was taken against the respondent no.3 under Section 138 of

the Negotiable Instruments Act, 1881, on 24.11.2018.

4. It is the case of the petitioners that in retaliation and as a counter blast of the Complaint Case No. 615 of 2018 filed by the petitioner no. 1, respondent no. 3 has lodged Triveniganj Police Station Case No. 29 of 2019.

5. The First Information Report, in question, has been lodged on the basis of written complaint of respondent no. 3, which states that the respondent no. 3 is the proprietor of M/s Balaji Traders and while he was going to Supaul, he lost some signed letter pads of his firm and also blank signed cheques in front of Triveniganj block on the main road. The respondent no. 3 informed about the lost blank cheques to the Branch Manager, State Bank of India, Triveniganj Branch, on 28.07.2017 and also requested for change of his signature. An information to the Station House Officer, Triveniganj Police Station, was also given by the respondent no. 3 on 05.08.2017. It has further been alleged that the petitioners, having found the lost blank signed cheques, tried to withdraw a sum of Rs. 44,14,006/-, representing themselves to be the partners of M/s Balaji Traders and got the cheque dishonoured.

6. The respondent no. 3 further states in the First Information Report that he came to know about the dishonouring the said cheque when he was served with the legal notice, dated 28.04.2018, to which he gave his reply and also contacted the petitioners asking them the reason behind their illegal act. He also requested the petitioners to return the letter pads and cheques to him. It has further been alleged that on 27.01.2019, at about 5 PM, when respondent no. 3 confronted the petitioners, he was abused, assaulted and threatened to part with a sum of Rs. 50 lakhs as rangdari or be ready to face dire consequences. The respondent no. 3 tried to escape, but he was held by the petitioner no. 5, Vijay Kumar, and the petitioner no. 3, Palash Das, on the gun point, threatened him not to raise hulla, the petitioner no. 5 snatched a gold chain, worth Rs. 50,000/- and the petitioner no. 6, namely, Raksha Verma snatched the hand bag of the respondent no. 3, containing documents of his firm and cash of Rs. 80,000/-.

7. Learned Counsel for the petitioners argued that the impugned First Information Report has been lodged as a counter blast to the Complaint Case No. 615 of 2018 filed by the petitioner no. 1 and out of sheer malice and to take vengeance. The respondent no. 3, against whom, cognizance has been taken under Section 138 of the Negotiable Instruments Act, 1881, by the Judicial Magistrate, 1st Class, Deoghar, has filed the present First Information Report for creating defence in the complaint case. The complaint case was filed by the petitioner no. 1 on 01.06.2018 and thereafter as an after thought, the present First Information Report has been lodged on 28.01.2019 on the basis of concocted story. He further argued that defence can be used to get oneself acquitted, but cannot be used as a tool to prosecute the other side and create pressure upon him by lodging the First Information Report with ill-motive. The respondent no. 3 is the resident of some other place, but his cheque got lost in Triveniganj block, which is at a great distance from his residence, and such a co-

incidence is highly improbable and unbelievable.

8. The contention of respondent no. 3, in the First Information Report, is that he got his signature changed for operation of the bank account, but, in the case in hand, the cheque was not dishonoured due to mismatch of signature, but the same was dishonoured on the ground of 'insufficient fund' in the account of respondent no. 3. The respondent no. 3, despite having knowledge about the cheque being dishonoured through the legal notice, did not lodge any case at that time, but it is only after he took part in the complaint case, the present First Information Report under quashing has been lodged in January, 2019 in order to create defence. He further submits that on the alleged date of occurrence, i.e. on 27.01.2019, the petitioner no. 5 was attending a meeting of the Milk Producer Union, at Deoghar, which would be evident from the local newspaper on 28.01.2019 (Annexure 4), wherein it has been reported with the photograph of petitioner no.

5. It is impossible for a person to reach Supaul on the date of occurrence from Deoghar since the two cities are at a distance of 250 kms, having 08 hours of journey.

9. Learned Counsel for the petitioners placed reliance on the decision of the Supreme Court, in the case of *Salib alias Shalu alias Salim v. State of U.P. and others*, reported in 2023 SCC ONLINE SC 947.

10. Learned Counsel for the respondent no. 3 argued that from the plain reading of the First Information Report, prima facie cognizable offence is made out. The points raised by the petitioners are disputed questions of facts, which relates to whether or not the cheque amount expresses the legally enforceable debt owed to the petitioner no. 1, which can only be tried by the learned Trial Court.

11. Learned Counsel further argued that before filing of the complaint case by the petitioner no. 1 on 01.06.2018, the respondent no. 3 had already given information to the Bank on 27.07.2017 and to the Station House Officer, Triveniganj Police Station, also, informing about the loss of the blank signed cheque.

12. I have heard learned Counsel for the parties concerned and have gone through the materials available on record, including the First Information Report of Triveniganj Police Station Case No. 29 of 2019.

13. The principles for quashing of the First Information Report are well established by the pronouncements of the Supreme Court in a catena of decisions, including *State of Haryana and Others v. Bhajan Lal and Others*, reported in 1992 Supp (1) SCC 335, *R. P. Kapur v. State of Punjab* (AIR 1960 SC 866) etc.

14. The Supreme Court, in the case of *Bhajan Lal* (supra), has given the categories of cases by way of illustration, where the extra ordinary power and/or inherent power can be exercised by the Court either to prevent abuse of the

process of any Court or otherwise to secure the ends of justice. One of such parameters is that the allegations in the First Information Report/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.

15. From the facts of the present case, it appears that there was business relationship between the petitioners and the respondent no. 3 and it was petitioner no. 1, who filed a complaint case in the year 2018 regarding the dishonouring of the cheque given to him by respondent no. 3. It is also not in dispute that after cognizance having been taken against the respondent no. 3 in the complaint case and after obtaining bail, the respondent no. 3 has lodged the First Information Report, under quashing, in the year 2019.

16. Another principle laid down by the Supreme Court, in the case of Bhajan Lal (supra), for quashing of the First Information Report, is that 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.

17. The Supreme Court, in the case of Salib (supra), has observed, in paragraph 28, as follows:-

"28. At this stage, we would like to observe something important. Whenever an accused comes before the Court invoking either the inherent powers under Section 482 of the Code of Criminal Procedure (CrPC) or extraordinary jurisdiction under Article 226 of the Constitution to get the FIR or the criminal proceedings quashed essentially on the ground that such proceedings are manifestly frivolous or vexatious or instituted with the ulterior motive for wreaking vengeance, then in such circumstances the Court owes a duty to look into the FIR with care and a little more closely. We say so because once the complainant decides to proceed against the accused with an ulterior motive for wreaking personal vengeance, etc., then he would ensure that the FIR/complaint is very well drafted with all the necessary pleadings. The complainant would ensure that the averments made in the FIR/complaint are such that they disclose the necessary ingredients to constitute the alleged offence. Therefore, it will not be just enough for the Court to look into the averments made in the FIR/complaint alone for the purpose of ascertaining whether the necessary ingredients to constitute the alleged offence are disclosed or not. In frivolous or vexatious proceedings, the Court owes a duty to look into many other attending circumstances emerging from the record of the case over and above the averments and, if need be, with due care and circumspection try to read in between the lines. The Court while exercising its jurisdiction under Section 482 of the CrPC or Article 226 of the Constitution need not restrict itself only to the stage of a case but is empowered to take into account the overall circumstances leading to the initiation/registration of the case as well as the materials collected in the course of investigation. Take for instance the case on hand. Multiple FIRs

have been registered over a period of time. It is in the background of such circumstances the registration of multiple FIRs assumes importance, thereby attracting the issue of wreaking vengeance out of private or personal grudge as alleged.”

18. Upon close reading of the First Information Report, it appears that the respondent no. 3 has narrated the story regarding blank signed cheques and letter pads having lost on 26.07.2017, while he was going towards Supaul and all the accused persons/petitioners accompanied him and they proceeded from Triveniganj market to Supaul towards the rented residence of the petitioners. The respondent no. 3, in the First Information Report, further narrated the legal notice received by him from the petitioner no. 1 regarding dishonouring of the cheque of Rs. 44,14,006/- and the reply to the legal notice having been sent by the respondent no. 3 to the petitioner no. 1. In the penultimate paragraph of the First Information Report, now the real allegation starts in which the respondent no. 3 has alleged that on 27.01.2019, when he demanded the signed letter pads and cheques from the petitioners, they abused him, assaulted him, demanded rangdari of Rs. 50 lakhs, threatened to shoot him and the petitioner no. 5 snatched gold chain worth Rs. 50,000/- and the petitioner no. 6, namely, Raksha Verma snatched the hand bag of the respondent no. 3, containing documents of his firm and cash of Rs. 80,000/-.

19. Upon looking into the attending circumstances emerging from the records of this case, over and above the allegation made in the First Information Report, with due care and circumspection, in my opinion, the present case falls in the parameters as laid down by the Supreme Court, as aforesaid. The First Information Report under quashing is highly improbable, frivolous and vexatious and appears to have been instituted with ulterior motive to wreck vengeance against the petitioner for filing complaint case regarding dishonouring of the cheque. The First Information Report can also be termed as a counter blast to the complaint case lodged by the petitioner no. 1 and in order to create defence by the respondent no. 3.

20. In view of the aforesaid discussion and overall view of the matter, I come to the conclusion that the First Information Report, in question, deserves to be quashed.

21. In the result, this application is allowed and the First Information Report, bearing Triveniganj Police Station Case No. 29 of 2019, lodged by respondent no. 3 against the petitioners, is hereby quashed.