

(2024) 05 PAT CK 0055

In the Patna High Court

Case No : Criminal Miscellaneous No. 44822 Of 2015

Shambhu Prasad Singh

APPELLANT

Vs

State Of Bihar

RESPONDENT

Date of Decision : 08-05-2024

Acts Referred:

Constitution of India, 1950 — Article 15, 17, 21, 142, 226

Indian Penal Code, 1860 — Section 120B, 323, 341, 406, 420, 467, 468, 471

Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989 — Section 3(I)(IV)(XI)(XV)

Code of Criminal Procedure, 1973 — Section 154(1), 154(3), 155(2), 156(1), 156(3), 482

Citation : (2024) 05 PAT CK 0055

Hon'ble Judges : Chandra Shekhar Jha, J

Bench : Single Bench

Advocate : Rakesh Narayan Singh, Ram Shankar Das, Vijay Kr. Sinha

Final Decision : Allowed

Judgement

1. Heard learned counsel for the petitioner and learned counsel for the respondents.

2. The present quashing petition has been preferred to quash the entire proceedings in connection with Special Case No. 140 of 2014 arising out of Harijan P.S. Case No. 4 of 2012, where learned Additional District Judge-I cum Special Judge SC/ST Act, Patna took cognizance for the offences punishable under Sections 341, 323, 420, 406, 467, 468, 471 and 120 (B) of the Indian Penal Code (in short IPC) and Section 3(I)(IV)(XI)(XV) of the SC/ST Act (Prevention of Atrocities) Act, 1989 against the petitioners, vide order dated 03.09.2013.

3. Opposite Party No. 2 is duly represented.

4. From the crux of complaint petition it appears that one Ashok Paswan, son of Late Tapeswar Paswan filed Complaint Case No. 27 (c) of 2012 against the

petitioners, stating thereof that complainant has got ancestral house constructed her 3 decimals of land having one room having concrete roof and 3 rooms with asbestos sheet and some open agricultural land, which is now residential in nature. It was alleged that malguzari/rent was being issued by Danapur Municipality in the name of his mother Mitwa Devi. It was further alleged that since the family extended as such mother and all the brothers and nephew separated. It was alleged that as there was difficulty in making payment of rent in the name of mother so, the complainant remained deprived of government aid due to non-availability of receipt of the house as such he asked accused Shambhu Prasad Singh a co-villager for helping in mutation and gave him details of land and house. It was alleged that taking advantage of innocence of complainant accused persons took complainant and his wife to the Officer of Special Registrar, Danapur and got signature and thumb impression on several papers and non judicial stamp papers where, on inquiry it was said that names shall be mutated after inquiry by the officer and will take some time. Believing upon the words of Shambhu Prasad Singh the complainant and his wife put their signature. It was further alleged that on 05.07.2011 accused Shambhu Prasad Singh took complainant and his wife in the office of Danapur Municipality again in the name of mutation and assured that their name will be mutated and receipt shall be issued to them. It was alleged that the accused Shambhu Prasad Singh and Manish Kumar on being asked for rent receipt, ignored. The complainant further alleged that from villagers he came to know that Shambhu Prasad Singh and Manish Kumar are trying to sell the house and land of the complainant thereupon he made inquiry in Danapur Municipality, where he was informed that no such application for mutation was filed.

The complainant further alleged that the Katib (scribe) Pramod Kumar informed that two Power of Attorneys in the name of Shambhu Prasad Singh and Manish Kumar has been executed upon by which complainant was shocked. The complainant claimed that he never executed any Power of Attorney, rather it was fraudulently obtained. The complainant further alleged that he asked Shambhu Prasad Singh and Manish Kumar to not sell the land and to cancel aforesaid Power of Attornies and for said purpose sent legal notice on 29.11.2011. The complainant alleged that on 08.01.2012 all the accused persons came to the house of the complainant and abused him and threatened them to evict the house, where they assaulted complainant and his wife. It is submitted that the Learned ACJM, Danapur after receiving the complaint sent it to the SC/ST Police Station, Patna upon which the Harijan P.S. Case No. 4 of 2012 was instituted against the petitioners.

5. Learned counsel appearing on behalf of the petitioners submitted that complaint petition bearing no. 27 (c) of 2012 is not supported by affidavit, which appears in violation of legal ratio as settled through decision of Hon'ble Apex Court in the case of Priyanka Srivastava and Another Vs. State of Uttar Pradesh and Others as reported in [(2015) 6 SCC 287]. It is pointed out that entire allegation appears to be raised in the background of land dispute, which is civil in

nature, where present criminal complaint case was registered with ulterior and oblique motive with harrassing attitude. In support of the submissions learned counsel relied upon the report of Hon'ble Supreme Court in the case of Usha Chakraborty and Another Vs. State of West Bengal and Another as reported in (2023) SCC Online SC 90.

6. While travelling over the argument learned counsel submitted that land dispute between the parties appears settled in view of compromise dated 28.01.2011 before local panch but thereafter out of oblique and ulterior motive things started taking different shape, causing filing of the present criminal case. It is submitted that O.P. No. 2 executed two registered Power of Attorneys dated 03.02.2011 in favour of petitioner no. 1 & 05.07.2011 in favour of petitioner no. 2, son of petitioner no. 1. It is pointed out that implication of petitioner no. 3 appears only for the reason being wife of petitioner no. 1 & mother of petitioner no. 2 without having any involvement. It is pointed out that alleged transaction of land was done by petitioner no. 2, infurtherance of registered Power of Attorney dated 05.07.2011, which was executed in favour of one Ranjeet through sale-deed dated 26.07.2011, where O.P. No. 2 also appears as an executing witness but said fact was not disclosed in the complaint petition. It is further submitted that three legal notices were sent by O.P. No. 2, which were duly replied by petitioners stating entire facts.

7. While concluding the argument learned counsel submitted that from the narration of complaint petition nothing appears, prima facie, being indicative of the fact that the present occurrence took place out of atrocities as defined under SC/ST (POA) Act, 1989. In support of the submissions learned counsel relied upon the report of Hon'ble Supreme Court in the case of Gulam Mustafa Vs. State of Karnataka and Another as reported in (2023) SCC OnLine SC 603. It is also submitted that complaint petition is not suggesting any dishonest intention made by the petitioners to make O.P. No. 2 landless and as such no, prima facie, case as alleged made out from complaint. In support of submissions learned counsel relied upon the report of Hon'ble Supreme Court in the case of State of Haryana and Others vs. Bhajan Lal and Others reported in 1992 Supp (1) Supreme Court Cases 335.

8. Learned APP duly assisted by learned counsel appearing on behalf of O.P. No. 2, while opposing the application submitted that complaint itself is speaking about the facts that how O.P. No. 2 being an illiterate and innocent person was mislead by the petitioners. It is submitted that by presenting the wrong impression as to help in mutation process, signature and thumb impression of O.P. No. 2 was obtained by petitioners, by adopting fraudulent and dishonest means with intention to create General Power of Attorney through which land in issue was sold to one Ranjeet Kumar through registered sale deed dated 26.07.2011. It is pointed out that the petitioners were aware about the fact that opposite party belongs to Scheduled Caste (SC) Community and just to grab his land and make him landless present attempt was made by petitioners.

9. Learned counsel for O.P. No. 2 also submitted that an attempt was also made by petitioners to make opposite party homeless by capturing his home and in view of same, prima facie, case appears to be made out against petitioners under SC/ST (POA) Act, 1989. It is further submitted that though name of O.P. No. 2 is appearing as witness in sale-deed dated 26.07.2011 as executed in favour of Ranjeet Kumar but photograph and signature of O.P. No. 2 is missing, which doubt its genuineness.

10. It would be apposite to reproduce the para nos. 30 and 31 of the Priyanka Srivastava Case (supra), which reads as under :-

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.

31. We have already indicated that there has to be prior applications under Sections 154(1) and 154(3) while filing a petition under Section 156(3). Both the aspects should be clearly spelt out in the application and necessary documents to that effect shall be filed. The warrant for giving a direction that an application under Section 156(3) be supported by an affidavit is so that the person making the application should be conscious and also endeavour to see that no false affidavit is made. It is because once an affidavit is found to be false, he will be liable for prosecution in accordance with law. This will deter him to casually invoke the authority of the Magistrate under Section 156 (3). That apart, we have already stated that the veracity of the same can also be verified by the learned Magistrate, regard being had to the nature of allegations of the case. We are compelled to say so as a number of cases pertaining to fiscal sphere, matrimonial dispute/family disputes, commercial offences, medical negligence cases, corruption cases and the cases where there is abnormal delay/laches in initiating criminal prosecution, as are illustrated in Lalita Kumari [(2014) 2 SCC 1 : (2014) 1 SCC (Cri) 524] are being filed. That apart, the learned Magistrate would also be aware of the delay in lodging of the FIR.

11. It would be apposite to reproduce the paragraph no(s). 6, 7, 8, 9 and 10 as reported through Usha Chakraborty case (supra), which reads as under:

6. In Paramjeet Batra v. State of Uttarakhand , 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 v. State of Kerala*, 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 v. Sanjay Sharma*, 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*, 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 abuse 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."

12. It would also be apposite to reproduce the paragraph no. 34 of Gulam Mustafa Case (supra), which reads as under :-

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."

13. It would also be apposite to reproduce the paragraph no. 102 of *Bhajan Lal Case* (supra), which reads as under:-

"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 extraordinary 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 informant 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 persons 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.”

14. In view of aforesaid factual and legal discussions, it appears that dispute between the parties is civil in nature being arises out of land dispute. It also appears that two registered Power of Attorneys dated 03.02.2011 & 05.07.2011 were executed by O.P. No. 2 in favour of petitioner nos. 1 and 2 having their photographs and fingerprints, where on the basis of registered Power of Attorney, petitioner no. 2 executed sale-deed in favour of one Ranjeet Kumar. From the narration of case and legal notices issued to petitioners by O.P. No. 2 it can be easily gathered that there was land dispute between the parties which was compromised on 28.01.2011 vide Annexure 6. The narration of FIR is also not suggesting that even any abuse was made in caste name where it appears, prima facie, that cognizance under atrocities was taken only for the reason that O.P. No. 2/informant belongs to SC Community. Complaint was also not supported by affidavit.

15. Accordingly, by taking guiding legal note of legal ratios as available through Priyanka Srivastava Case (supra), Usha Chakraborty case (supra) and Bhajan Lal

Case (supra), impugned order of cognizance dated 03.09.2013 with all its consequential proceedings, qua, all above named petitioners in connection with Special Case No. 140 of 2014 arising out of Harijan P.S. Case No. 4 of 2012, pending before learned Additional District Judge-I cum Special Judge SC/ST Act, Patna is hereby quashed and set aside.

16. The application stands allowed.

17. Let a copy of this judgment be sent to learned Trial Court, immediately.