

**IN THE HIGH COURT OF JUDICATURE AT PATNA  
CRIMINAL MISCELLANEOUS No.16258 of 2021**

Arising Out of PS. Case No.-6 Year-2020 Thana- MAHILA P.S. District- Bhagalpur

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Somesh Kumar Mishra @ Mishra Somesh Kumar Shivkumar S/o Shiv Kumar  
Mishra Resident of Jharna Colony, P.S.- Sahibganj, District- Sahibganj

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

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**Appearance :**

For the Petitioner/s	:	Mrs.Susmita Lal, Advocate
	:	Mr.Ambuj Kumar Chandra, Advocate
	:	Mr. Kamakhya Srivastava,
For the Opposite Party/s :	:	Mr.Kamakhya Srivastava, A.P.P.

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**CORAM: HONOURABLE MR. JUSTICE RAJESH KUMAR VERMA  
CAV JUDGMENT**

**Date : 19-10-2022**

Heard Mrs. Susmita Lal, learned counsel for the  
petitioner and Mr. Kamakhya Srivastava, learned APP for the  
State.

2. The present quashing application has been filed for  
quashing of the First Information Report (For short 'FIR'), which  
has given rise of Bhagalpur (Mahila) P.S.Case No.06 of 2020,  
under Sections 323, 341, 420, 376, 506 of the Indian Penal Code  
and Section 67(A) of the Information Technology Act.

3. The informant's case, as unfolded by the First  
Information Report, based on an E.Mail by the informant to the  
Bihar Police Academy, Rajgir on 03.12.2019. According to  
statement/fardbeyan of the informant is that the informant is



cousin sister of the accused and he sexually exploited her from the year 2009 to 2012 and again in the year 2018 he started to harass the informant by making calls in her office and messaging her and threatening her and then she complained about it in Bihar Police Academy through email where the accused petitioner was getting his training.

4. Treating the said statement/fardbeyan as First Information Report, Bhagalpur (Mahila) P.S.Case No.06 of 2020, under Sections 323,341,420,376,506 of the Indian Penal Code and Section 67(A) of the Information Technology Act, was registered against the accused/petitioner.

5. The petitioner seeks quashing of the First Information Report on the ground that whole case against him is a result of personal vendetta and conspiracy hatched by the informant herself to ruin the life and career of the petitioner. The present FIR was lodged in the year 2019 i.e. after 10 years of alleged occurrence.

6. It is necessary to mention that in the case of **Kailash Rai Vs. The State of Bihar & Ors** held by the Patna High Court reported in **2016 SCC OnLine Patna 8303**, relevant paragraphs 7,8,9,10,11,12,13,14 and 15 read as follows:



7. Before entering into the merit of the petitioner's case, it is necessary to point out that the law, with regard to the quashing of criminal complaint or First Information Report, is no longer *res integra*. A catena of judicial decisions has settled the position of law on this aspect of the matter. I may refer to the case of **R.P. Kapoor v. State of Punjab**, AIR 1960 SC 866, wherein the question, which arose for consideration, was whether a First Information Report can be quashed under Section 561A of the Code of Criminal Procedure, 1898. The Court held, on the facts before it, that no case for quashing of the proceeding was made out; Gajendragadkar, J. speaking for the Court, however, observed that though, ordinarily, criminal proceedings, instituted against an accused, must be tried under the provisions of the Code, there are some categories of cases, where the inherent jurisdiction of the Court can and should be exercised for quashing the proceedings. One such category, according to the Court, consists of cases, where the allegations in complaint or the First Information Report, even if they are taken at their face value and accepted in their entirety, do not constitute the



*offence alleged; in such cases, no question of appreciating evidence arises and it is a matter merely of looking at the complaint or the First Information Report in order to decide whether the offence alleged is disclosed or not. In such cases, observed the Court, it would be legitimate for the High Court to hold that it would be manifestly unjust to allow the process of the criminal Court to be issued against the accused.*

8. *From the case of **R.P. Kapoor**(supra), it becomes abundantly clear that when a mere look into the contents of a complaint or First Information Report shows that the contents thereof, even if taken at their face value and accepted to be true in their entirety, do not disclose commission of offence, the complaint or the First Information Report, as the case may be, shall be quashed.*

9. *As a corollary to what has been discussed above, it is also clear that if the contents of a complaint or an First Information Report constitute offence, such a complaint or First Information Report cannot be quashed except where the complaint or the First Information Report is, otherwise also, not sustainable in law.*



10. *Laying down the scope of interference by the High Court in matters of quashing of First Information Report or complaint, the Supreme Court, in the leading case of **State of Haryana and Ors. v. Bhajanlal and Ors.**, reported in, 1992 Supp (1) SCC 335, observed as follows:*

“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 of 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 the 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 of 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 made 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 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 allegation 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 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 of the*



*accused and with a view to spite him due to private and personal private grudge.”*

*(Emphasis is added).*

11. *In the case of **Bhajanlal**(supra), the Supreme Court gave a note of caution on the powers of quashing of criminal proceeding in the following words:“103. We also give a note of caution to the effect that the power of quashing a criminal proceeding should be exercised very sparingly and with circumspection and that too in the rarest of rare cases; that the Court will not be justified in embarking upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR or the complaint and that the extra ordinary or inherent powers do not confer an arbitrary jurisdiction on the Court to act according to its whim or caprice.”*

*(Emphasis is added).*

12. *It is clear from a close reading of the principles laid down in the case of **R.P. Kapoor**(supra) and **Bhajanlal**(supra) that broadly speaking, quashing of a First Information Report or a complaint is possible (a)when the allegations made in the First Information*





*Report or the complaint, even if taken at their face value and accepted in their entirety as true, do not prima facie constitute any offence or make out a case against the accused; (b) when the uncontroverted allegations, made in the First Information Report or complaint and evidence collected in support of the same, do not disclose the commission of any offence and/or make out a case against the accused; and (c) when the allegations, made in the First Information Report or complaint, are so absurd and inherently improbable that on the basis of such absurd and inherently improbable allegations, no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.*

13. *It is, thus, apparent that in a quashing proceeding, it is, ordinarily, not, within the ambit of the powers of the High Court, under Section 482 of the Code of Criminal Procedure and/or Article 226 of the Constitution of India, to determine the truth, veracity, correctness or otherwise of the accusations made in the First Information Report or a complaint.*

14. *In the case at hand, too, therefore, this Court has to proceed on the assumption that the*



*allegations, made in the complaint, are true and, then, determine whether the contents of the complaint, if assumed to be true, disclose commission of any offence or whether the allegations, made in the First Information Report, are so absurd or inherently improbable that no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.*

*15. In the light of the position of law, as discussed above, namely, that an First Information Report cannot be quashed if the allegations made therein, when assumed to be true, make out a cognizable offence except when the allegations made therein are so absurd or inherently improbable that no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.*

7. That in the present case the informant alleged that the petitioner has committed rape upon her and whereas the case of the petitioner is that the present criminal proceedings have been initiated by the informant/complainant with an ulterior motive due to private and personal grudge and present proceeding is abuse of the process of the law/court.



8. The learned counsel for the petitioner relied upon the following decisions in support of the case:

(i) 2013 (9) SCC 293 (Prasant Bharti Vs. NCT, Delhi (Supreme Court).

(ii) Santosh Prasad @ Santosh Kumar Vs. State of Bihar (Supreme Court). (Cr.Appeal No.264 of 2020).

(iii) Rajoo & Ors Vs.State of M.P. (Supreme Court, Cr. Appeal No.1094-1098 of 2000.

(iv) Vineet Kumar & Ors Vs. State of U.P. reported in AIR 2017 SC 1884.

(v) State of Karnatka Vs. L. Muniswamy reported in 1977AIR 1489.

(vi) Ram Kumar Pandey Vs. State of M.P. reported in 1975 AIR 1026.

(vii) Crl. M.C. 2960 of 2021 (Delhi High Court) Capt. Simranjit Singh Sambhi Vs. State (NCT of Delhi).

(viii) CRMC No.512 of 2017 (Jammu & Kashmir High Court)Sunil Kumar Vs. State.

9. The learned APP for the State has vehemently opposed the prayer for quashment of the FIR of the petitioner for the reason that the allegation against the petitioner is of serious nature.



10. In the present case, it is not possible for this Court to come to the conclusion that the present FIR is false. The truth can be determined only in investigation of the case. In the rarest of rare cases that quashing of FIR would be permissible, no prudent person can even reach a just conclusion that there is sufficient ground for proceeding against the accused/petitioner. It is manifest from the FIR as a whole, it appears that prima facie case is made out against the accused/petitioner.

11. Considering the nature of accusations in the FIR containing ingredients of offence against the petitioner, this Court is not inclined to interfere in the matter at this stage.

12. Accordingly, the quashing application stands dismissed.

**(Rajesh Kumar Verma, J)**

Nitesh/-

AFR/NAFR	NAFR
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