

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.60085 of 2023

CNR No. BRHC010781612023

Arising Out of PS. Case No.-281 Year-2023 Thana- KADAMKUAN District- Patna

Rakesh Kumar Tiwary S/O Sri Suresh Tiwary Resident Of House No. 46,
Patliputra Colony, P.S Patliputra, District Patna,

... .. Petitioner/s

Versus

1. The State of Bihar
2. Sheela Tiwary, aged 52 years wife of Sri Om Prakash Tiwary Resident of Flat No. 501, Deepleela Complex, Bindhyavashini Street, Kadamkuan, P.S.- Kadamkuan, Town and District-Patna-800001

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr. Navjot Yesu, Advocate
	:	Mr. Rishi Raj Raman, Advocate
For the State	:	Mr. Chandra Sen Prasad Singh, APP
For the O.P. No.2	:	Mr. Asshar Mustaffa, Advocate

CORAM: HONOURABLE JUSTICE SMT. SONI SHRIVASTAVA
CAV JUDGMENT

Date : 15-10-2026

Heard learned counsel for the petitioner, learned APP for the State and learned counsel for the opposite party no.2. The statements of two enquiry witnesses were subsequently made available which have also been kept on record.

2. Instant application under Section 482 of Cr.P.C. had been initially filed seeking quashing of the First Information Report (hereinafter referred to as 'FIR') bearing Kadamkuan P.S. Case No.281 of 2023 for the offences punishable under Sections 339, 354, 385, 451, 452, 469, 506 and 120B of the Indian Penal



Code (hereinafter referred to as 'IPC') and Section 66D of the IT Act.

3. During the pendency of this application, an interlocutory application bearing I.A. No.1 of 2025 was filed praying for quashing of the order dated 05.05.2025 passed by the learned Judicial Magistrate First Class, Patna, in connection with Complaint Case Number 15721(C) of 2024, whereby and whereunder cognizance was taken against the petitioner only under Section 384 of the IPC, and summons were issued thereunder. This I.A. No.1 of 2025 was filed in the wake of the subsequent development of a final form having been filed with respect to FIR on 30.04.2024 and the same being accepted on 16.12.2024, whereafter the protest petition dated 02.06.2023, being on record, was treated as complaint, whereupon cognizance was taken by the order impugned dated 05.05.2025.

4. On 31.08.2026, when the matter was being heard, a preliminary objection was raised on behalf of the opposite party no.2 with regard to maintainability of the prayer made by way of I.A. No.1 of 2025 on the ground that initial challenge to the FIR bearing Kadamkuan P.S. Case No. 281 of 2023 had resulted in a closure pursuant to the final form being submitted and accepted and the impugned order arises out of a separate complaint, which



ought to have been challenged by way of a separate application and the consideration of the said prayer is not fit to be entertained in the present application as the same has become infructuous.

5. It has been argued that an interlocutory application has no independent existence and it only results in passing of interlocutory order, which is procedural in nature, having no bearing on the rights of the parties. Thus, the subject of an interlocutory application cannot form independent cause of action. It has been submitted that once the petition has already become infructuous, permitting a party to file an interlocutory application would defeat the very object and its procedural justification.

6. Learned counsel for the opposite party no.2 has referred some judicial pronouncements of the Hon'ble Supreme Court on the point of power of the magistrate to take cognizance of the offence on a complaint or a protest petition on the same or similar allegations, even after the acceptance of the final report. Reference has been made in this regard to the case of ***Zunaid vs. State of U.P. and Ors.***, reported in ***(2023) 14 SCC 576***. Further, the case of ***Vishnu Kumar Tiwari vs. State of U.P. & Anr.***, reported in ***(2019) 8 SCC 27***, has also been referred to contend that there can be no doubt or dispute that only because the Magistrate has accepted a final report, the same by itself would stand in his



way to take cognizance of the offence on a protest/complaint petition and if a protest petition fulfills the requirement of the complaint, the Magistrate may treat the same as a complaint and deal with the same as required under Section 200 read with Section 202 of the CrPC. Reference has also been made to the case of *Mukhtar Zaidi v. State of U.P.*, reported in **2024 SCC OnLine SC 553**.

7. On the above mentioned grounds, the contention made on behalf of the opposite party no.2 is that a protest petition filed by the opposite party no.2 has rightly been treated as a complaint and there is no illegality in the impugned order taking cognizance. The primary objection to the present application is that since the original application has already become infructuous, the I.A. itself is not maintainable and that addressing on the merits of the case at this stage would only be an exercise in futility.

8. Learned counsel appearing for the petitioner has first responded to the preliminary objection by stating that the present case originates initially out of a complaint bearing Complaint Case No.12294 of 2022 filed before the Court of learned CJM, Patna, on 20.10.2022, which was forwarded to the police for investigation under Section 156(3) of the CrPC on 04.05.2023, leading to the registration of Kadamkuan P.S. Case No. 281 of 2023 on



12.05.2023. It has been submitted that merely within a month of registration of the FIR, a protest petition was filed by the opposite party no.2 on 02.06.2023 containing the same facts and cause of action, rather the averments made therein were verbatim the same and only a reproduction of the earlier complaint bearing Complaint Case No.12294 of 2022, but for some additional content at the end of the complaint, stating that since the investigating officer was not taking steps for arrest of the accused persons and not recording some other relevant details, a doubt was raised on the fairness of the investigation.

9. With regard to the specific objection and entertaining the present I.A. No.01 of 2025, it has been submitted that since the content of the earlier FIR and the present complaint was verbatim the same and the protest petition, which has been treated as a complaint, was already on record and as a matter of fact, the subsequent development of passing of the impugned order taking cognizance on the said protest/complaint, took place during pendency of the present application where the FIR with the same content was under challenge and was being adjudicated upon, challenging the impugned order by way of a fresh petition would only amount to multiplicity of litigation and also abuse of the process of the Court. A reference has been made to the case of



Pradnya Pranjal Kulkarni vs. State of Maharashtra & Anr., reported in ***(2026) 6 SCC 813***, wherein the question had arose as to whether where the prayer was initially for quashing of the FIR, a subsequent charge-sheet and order taking cognizance could be assailed in the same application. It was held that “*so long as cognizance of the offence is not taken, a writ or order to quash the FIR/charge-sheet could be issued under Article 226 of the Constitution. However, once a judicial order of taking cognizance intervenes, the power under Article 226 of the Constitution though not available to be exercised, power under Section 528 of the BNSS was available to be exercised to quash not only the FIR/charge-sheet but also the order taking cognizance, provided the same is placed on record along with requisite pleadings to assail the same and a strong case for such quashing is set up.*”

10. On the basis of the aforesaid decision, it was contended that since the jurisdiction under Section 482 of CrPC, which is pari materia to Section 528 of the BNSS, was invoked in the present case, the relief claimed could be moulded/amended with a view to prevent multiplicity of litigations.

11. Learned counsel has also made a reference to the case of ***Krishna Lal Chawla & Ors. vs. State of U.P. & Anr.,*** reported in ***(2021) 5 SCC 435***, to contend that the present



complaint containing the same allegations as the earlier complaint leading to the FIR and final form, is totally a frivolous litigation, which is fit to be nipped in the bud, at the threshold stage, both to protect the right to liberty under Article 21 of the Constitution to which every person is entitled and also to save the judicial time that comes at the cost of public money.

12. Before proceeding on to the merits of the case, this Court would first deal with preliminary objection raised on behalf of the opposite party no.2.

13. I have heard the rival contentions raised by both the parties and have gone through the records of the case. The records reveal that although time had been granted to the opposite party no.2 to file a counter affidavit in the matter, but the same was not done. However, at a later stage, the present objection was orally raised regarding the maintainability of the I.A. No.1 of 2025 and upon entertaining the present application.

14. The sequence of events make it amply clear that the complainant/opposite party no.2, had initially filed a complaint bearing Complaint Case No. 12294 of 2022 on 20.10.2022, which was sent for to the police for investigation under Section 156(3) of the CrPC on 04.05.2023 and after receipt of the same on 09.05.2023, the Kadamkuan PS Case No.281 of 2023 was



registered on 12.05.2023. The said FIR was challenged by way of the present application filed under Section 482 of the CrPC on 17.08.2023. However, a protest petition was filed before the Court concerned on 02.06.2023 itself, i.e. within one month of the registration of the FIR. In the meantime, during pendency of the present application before this Court, certain developments took place resulting in filing of a final form by the police finding the case untrue on 30.04.2024 and the same stood accepted by an order dated 16.12.2024, and on the said date itself, the learned Court concerned proceeded to treat the protest petition dated 02.06.2023 as a complaint. After recording the statement of the complainant on solemn affirmation, the depositions of two inquiry witnesses was recorded under Section 202 of the CrPC, which led to the taking of cognizance and issuance of summons by the order dated 05.05.2025, passed by the same court of JM First Class, Patna, which was brought on record by way of I.A. No.1 of 2025 in the present application and was put to challenge.

15. The present application was taken up for the first time on 02.02.2026 when considering the non-speaking nature of the order of cognizance and other grounds making out a case of malicious prosecution, notice was issued to the opposite party no.2 and further proceedings of the learned Court concerned was



directed to remain stayed as against the petitioner. Upon appearance of the opposite party no.2, matter was taken up on 10.03.2026, when time was sought for filing a reply and the matter was posted for 17.03.2026. However, on the said date the matter got adjourned for 03.04.2026. Thereafter, this matter came to be taken up on 21.08.2026, yet no reply had been filed on behalf of the opposite party no.2 and after directing the petitioner to serve a copy of the I.A. No.1 of 2025 to the counsel for the opposite party no.2, the case was directed to be listed after a week, giving time to the opposite party no. 2 to respond. On 31.08.2026, for the first time a preliminary objection was raised by the opposite party no. 2 with regard to entertaining the present application against the impugned order dated 05.05.2025, as the said challenge was being made by way of an I.A. No.1 of 2025, which was not fit to be entertained on the grounds mentioned in the preceding paragraphs. By way of the said order, a report had also been called for from the Court of learned Judicial Magistrate First Class, Patna, with regard to the fact as to whether notices were issued and served upon the petitioner before taking of cognizance on 05.05.2025. On the next appointed date, after the report having been received, the parties were finally heard at length and the order was reserved.



16. Although no specific authority was cited on behalf of the opposite party no.2 on his preliminary objection, but it was vehemently contended that the challenge to the impugned order taking cognizance by way of I.A. No. 1 of 2025 is fit to be rejected, as the original application had already become infructuous in the event of the filing and acceptance of the final form. This Court has no hesitation in coming to agreement to the contention of the opposite party no. 2 to the extent that since the final form had been accepted with regard to the FIR and the Court had proceeded on a protest petition-cum-complaint, it was in the fitness of things that a subsequent order of cognizance passed in protest-cum-complaint ought to have been challenged by way of separate application.

17. The judgment passed in the case of ***Pradnya Pranjali Kulkarni*** (*supra*) relied by the petitioner comes to his rescue only to the extent that when a petition under Section 528 of B.N.S.S./482 of CrPC is filed for quashing of the FIR or charge-sheet, if a subsequent order has been passed taking cognizance, which is challenged by way of placing it on record, the same can still be considered for quashing in the same application, as distinct from an application under Section 226 of the Constitution, where the same may not be permitted. It is true that in the present case



also the jurisdiction under Section 482 of CrPC/528 of BNSS had been invoked, but the difference being that the FIR in the present case had resulted in a final form, which was accepted and the learned Court had proceeded with protest, treating it as a complaint.

18. In such circumstances, in a normal course, the application challenging the FIR could have been withdrawn and a fresh application could be filed challenging the cognizance order passed in connection with protest-cum-complaint. However, the same was not done and the matter remained pending for long, and certain orders were also passed issuing notices to the opposite party no. 2 and the case was considered both on the factual and legal context, and a stay of proceedings was ordered. It is also a fact that the contents of the present complaint are verbatim the same as that of the earlier complaint, which forms the basis of the FIR which was subjected to challenge in the original application.

19. However, taking a comprehensive view of the entire facts and circumstances, the sequence of events and the pendency of the present application for a final adjudication for long, this Court would proceed to take a view that at this stage, relegating the petitioner to filing of a separate application to challenge the order taking cognizance would not serve any useful or legitimate



purpose. It would still be an application under Section 528 of BNSS/482 of CrPC, being freshly filed, leading to multiplicity of litigation and consumption of more of judicial time, as it would lead to fresh filing, fresh consideration, fresh issuance of notices, and then fresh arguments for the purposes of final adjudication, which stage we have already reached in the present application.

20. There are times when technical objections come in the way of a final adjudication and act as impediment in leading a case or dispute to a closure. However, when substantial justice and technical considerations are pitted against each other, the Courts by way of numerous decisions, including the case of ***Collector (LA) & Anr. vs. Katiji & Ors.***, reported in ***(1987) 2 SCC 107***, have taken a view that the cause of substantial justice deserves to be preferred, relegating the technicalities to the background, moreso when no serious prejudice is caused to any party. In this regard this Court may gainfully refer to the case of ***Sugandhi & Anr. vs. P. Rajkumar***, reported in ***(2020) 10 SCC 706***, paragraph 9 of which is quoted hereinbelow for a ready reference:

“9. It is often said that procedure is the handmaid of justice. Procedural and technical hurdles shall not be allowed to come in the way of the court while doing substantial justice. If the procedural violation does not seriously cause prejudice to the adversary party, courts must lean towards doing substantial



justice rather than relying upon procedural and technical violation.....”

21. On such premise, in the considered view of this Court, taking into account that the jurisdiction of this Court under Section 482 of CrPC/528 of B.N.S.S. has been invoked, this Court is of the considered view that it would be expedient in the interest of justice to proceed to consider the relief claimed by way of the interlocutory application bearing I.A. No. 1 of 2025. Thus, not entertaining the I.A. on purely technical ground at this stage, by way of directing the petitioner to file a fresh application under Section 482 of Cr.P.C., when this Court is already seized of the matter, would only amount to multiplicity of litigation and causing a further delay in adjudication. However, it is made clear that such consideration is being made in the facts and circumstances of the present case, and the same may not be considered as a precedent for maintaining an interlocutory application moulding relief in case where a separate application is required to be filed in accordance with law.

22. On merits of the case, learned counsel for the petitioner has submitted that present complaint is a glaring case of malafide prosecution, inasmuch as, the complainant was highly aggrieved by the investigation made by the Delhi Police in connection with Parliament Street P.S. Case No. 27 of 2022 lodged



by the petitioner relating to blackmailing, extortion, etc., for which the Delhi Police had come to the office of husband of the complainant, having found some involvement. It has further been submitted that, as a matter of fact, no offence, much less the offence as alleged and as has been taken cognizance of, is made out against the petitioner even upon face of the allegations as made in the complaint. Admittedly, petitioner was not even present at the place of occurrence and he was at Mumbai, as he had participated in the nomination process for election to the Board of Control for Cricket in India (BCCI), as he was the President of the Bihar Cricket Association. It has been further submitted that it could be a fact that the Delhi Police had gone to the office of the husband of the complainant for the purposes of investigation of Parliament Street P.S. Case No. 27 of 2022, but the false and concocted facts have been inserted and behest in the complaint by stating that acts of ransacking the office by the Delhi Police was done at the instruction and behest of the petitioner.

23. The order taking cognizance has also been assailed on the ground that the impugned order has been passed mechanically, without any application of judicial mind, and it is purely illegal as the same has been passed in complete contravention to the proviso to Section 223 of the BNSS,



according to which notices were to be issued to the accused before taking of cognizance upon a complaint.

24. I have heard the contentions raised on behalf of the petitioner both on facts and law, however no substantial arguments have been made on behalf of the opposite party no. 2 on the merits of the case, but for the fact that there is no illegality in the order taking cognizance, passed on the basis of the materials on record making out a *prima facie* case against the petitioner, as such, the same does not warrant any interference.

25. Upon a perusal of the complaint itself, it would appear that the allegation against the petitioner is an imaginary one of having instructed the Delhi Police to visit the office of the complainant and indulge in illegal acts of ransacking the office of the husband of the complainant and taking away of articles. No date or time has been indicated with regard to first part of the allegations of asking the complainant to support him in his illegal acts of Bihar Cricket Association or face dire consequences. It further appears from the complaint that Delhi Police had come for investigation of a case bearing Parliament Street P.S. Case No. 27 of 2022, and it is also abundantly clear that the petitioner was nowhere present at the place of occurrence. As such, his



implication is based only on a far-fetched allegation that Delhi Police was carrying on the acts at the instruction of the petitioner.

26. The very fact that the present protest has been treated as a complaint makes it clear that, based on such vague allegations, earlier a final form had been submitted and accepted with respect to same allegations. The entire complaint is indicative of a grievance against an investigation being done by the Delhi Police in relation to a case lodged at Delhi, and by no stretch of imagination any offence under Section 384 of the IPC is made out against the petitioner, the essential ingredients of which would be intentionally putting any person in fear of any injury to that person, and thereby dishonestly inducing him to deliver any property or valuable security. As a matter of fact, Section 384 of the IPC was not even alleged in the complaint and the FIR bearing Kadamkuan P.S. Case No. 281 of 2024 was also not lodged under the aforesaid section.

27. It is also a fact that the very admission in the complaint of the existence of Parliament Street P.S. Case No. 27 of 2022 indicates that the husband of the opposite party no. 2 had some apprehension with regard to his involvement in the said case. As such, for the purposes of countering the same, the present complaint seems to have been filed against the Delhi Police, as



also the present petitioner. Oblique motives are quite apparent and the process of the Court cannot be permitted to be abused or misused for the purposes of wreaking vengeance or for filing cases with malicious intent and motivated allegations.

28. It thus appears that the impugned order dated 05.05.2025 is a clear reflection of total non-application of mind, as the learned Magistrate seems to have mechanically taken cognizance and issued summons against the petitioner by finding a *prima facie* case under Section 384 of the IPC, the ingredients of which are just not made out, even on the face of the allegations, as against the petitioner. Moreover, both the enquiry witnesses are highly interested witnesses, one being the husband of the opposite party no.2, who is at the centre of the entire dispute and the other being his staff.

29. In the case of ***Pepsi Foods Ltd. vs. Judicial Magistrate***, reported in ***(1998) 5 SCC 749***, the Hon'ble Supreme Court had held in clear and unambiguous terms, that summoning of an accused in a criminal case is a serious matter and it is not that complainant only by bringing two witnesses to support his allegations in the complaint, the criminal law be set into motion. Order of the Magistrate summoning the accused must clearly reflect that he has applied his independent judicial mind to both



the facts of the case and its legal sanctity, rather than remaining a silent and mute spectator. Paragraph-28 of the ***Pepsi Foods Ltd.*** (*supra*) is quoted hereinbelow:

“28. Summoning of an accused in a criminal case is a serious matter. Criminal law cannot be set into motion as a matter of course. It is not that the complainant has to bring only two witnesses to support his allegations in the complaint to have the criminal law set into motion. The order of the Magistrate summoning the accused must reflect that he has applied his mind to the facts of the case and the law applicable thereto. He has to examine the nature of allegations made in the complaint and the evidence both oral and documentary in support thereof and would that be sufficient for the complainant to succeed in bringing charge home to the accused. It is not that the Magistrate is a silent spectator at the time of recording of preliminary evidence before summoning of the accused. The Magistrate has to carefully scrutinise the evidence brought on record and may even himself put questions to the complainant and his witnesses to elicit answers to find out the truthfulness of the allegations or otherwise and then examine if any offence is prima facie committed by all or any of the accused.”

(Emphasis supplied)

30. The judgment rendered in ***Pepsi Foods Ltd.*** (*supra*) was considered and reiterated in the case of ***Krishna Lal Chawla*** (*supra*), by re-emphasizing that the power to issue a summoning order is a matter of grave importance and that the Magistrate must



only allow criminal law to take its course after satisfying himself that there is a real case to be made out, while stating that since power bestowed on the Magistrate have grave reflections on individual citizen's life and liberty, these powers confer great responsibility on their shoulders, which must be exercised with commensurate caution and with suitable judicial application of mind. With regard to frivolous allegations, it was held in paragraph 22 of the case of **Krishna Lal Chawla** (*supra*) as reproduced hereinbelow:

“22. Frivolous litigation should not become the order of the day in India. From misusing the public interest litigation jurisdiction of the Indian courts to abusing the criminal procedure for harassing their adversaries, the justice delivery system should not be used as a tool to fulfil personal vendetta. The Indian judiciary has taken cognizance of this issue. In 2014, this Court elucidated as follows, the plight of a litigant caught in the cobweb of frivolous proceedings in Subrata Roy Sahara v. Union of India [Subrata Roy Sahara v. Union of India, (2014) 8 SCC 470 : (2014) 4 SCC (Civ) 424 : (2014) 3 SCC (Cri) 712] : (SCC p. 642, para 191)

“191. ... One needs to keep in mind, that in the process of litigation, there is an innocent sufferer on the other side, of every irresponsible and senseless claim. He suffers long drawn anxious periods of nervousness and restlessness, whilst the litigation is pending, without any fault on his part. He pays for the litigation, from out of his savings (or



out of his borrowings), worrying that the other side may trick him into defeat, for no fault of his. He spends invaluable time briefing counsel and preparing them for his claim. Time which he should have spent at work, or with his family, is lost, for no fault of his.”

While the Court's ruling pertained to civil proceedings, these observations ring true for the criminal justice machinery as well. We note, with regret, that 7 years hence, and there has still been no reduction in such plight. A falsely accused person not only suffers monetary damages but is exposed to disrepute and stigma from society. While running from pillar to post to find a lawyer to represent his case and arranging finances to defend himself before the court of law, he loses a part of himself.”

(Emphasis supplied)

31. The principal ground of challenge to the criminal proceedings pointed out by the petitioner for setting aside the order taking cognizance, is based on complete violation of the proviso to Section 223 of the BNSS, as no notice was even issued or served upon the petitioner, who was an accused, before taking cognizance in a complaint case. This Court had earlier called for a report from the Court concerned with regard to the fact as to whether notices were issued or served upon the petitioner/accused before taking of cognizance and issuance of summons. The report dated 10.09.2026 sent to this Court clearly discloses that notices were not sent to the petitioner before passing of the order dated 05.05.2025. The



arguments in this regard made on behalf of the opposite party no.2 that since the protest was already pending before coming into force of the BNSS and the same was treated to be a complaint and cognizance taken thereupon only subsequently, the proviso to Section 223 of the BNSS would not apply in the present case, is fit to be rejected.

32. Very recently, in the case of **Umar & Anr. vs. The State of Uttar Pradesh & Anr.**, [2026 INSC 1058], the Hon'ble Supreme Court was seized of a similar situation where the earlier FIR, a closure report, a protest petition were filed in the year 2022, the subsequent investigation on protest had resulted in a closure report and a protest petition being filed and the same being treated as a complaint, all were done in the year 2023 and only after the matter remained in limbo for a long time, cognizance was taken only in the year 2026, when the BNSS had come into force. The Hon'ble Supreme Court, taking into consideration the case of **Parvinder Singh vs. Enforcement Directorate**, reported in **2026 SCC OnLine SC 903**, considered the statutory mandate of the proviso to Section 223 of the BNSS, which is a departure from the pari materia provision in CrPC. Considering the same, it was ordered that the Courts had to summon the accused and hear him before such cognizance was taken. Paragraphs 3 and 12 of the case



of **Umar & Anr.** (*supra*) are being reproduced hereunder for clarity:

“3. We need not dwell upon the facts leading to the complaint. Suffice it to notice that an FIR was registered on 07.06.2022, pursuant to which the police filed a Closure Report after investigation on 06.08.2022. On 14.10.2022, a protest petition was filed in which further investigation was ordered under Section 173(8) of the Cr.PC on 29.11.2022. After further investigation, a Closure Report was again filed on 14.02.2023, against which also a protest petition was filed on 28.04.2023. The complaint was taken on board on 11.10.2023 and the same was posted for statement of the complainant, which was taken along with that of the other witnesses produced, on 06.03.2024. The matter remained in limbo till 03.06.2026 when the learned Special Judge, (SC/ST), Azamgarh, by a detailed order prima facie found commission of the offence and issued process against the respondents.

12. From a reading of the first order passed, taking on record the complaint and requiring the complainant's presence for taking evidence, as also the second order passed finding prima facie case made out on which process was issued, we are of the opinion that it is the second order passed on 03.06.2026 that the judicial mind was applied, as prima facie case was found, deeming the cognizance having been taken. That being so, the Court had to summon the accused and hear him before such cognizance was taken.”



33. The Hon'ble Supreme Court also in the case of ***Kushal Kumar Agarwal vs. Enforcement Directorate***, reported in ***2025 SCC OnLine SC 1221***, observed that the proviso to Section 223(1) of the BNSS puts a clear embargo on the power of the Court to take cognizance in absence of opportunity of hearing being afforded to the accused. This provision has been brought on the statute book in consonance with the principles of natural justice. Taking away of such a valuable right flowing from the statute is a direct attack on the statutory mandate and the legislative intent. It would be totally unjust to term it as a mere irregularity, rather it becomes a case of serious infirmity in the order making it legally unsustainable.

34. This Court, in normal circumstances, may have exercised the option of remanding the matter for fresh consideration after compliance of the provision of the proviso to Section 223(1) of the BNSS, but having considered the entire materials on record, this Court has no hesitation to hold that even on the face of the allegations, no offence is made out against the petitioner. Moreover, the complaint itself is suggestive of the backdrop in which it came to be filed, making it indisputably clear that the prosecution is a vexatious one, distinctly attended with malafide. In such glaring circumstances, no useful or legitimate



purpose would be served but for consumption of more of precious judicial time getting engaged in frivolous litigation.

35. Thus, taking the entire foregoing discussions into account, I come to the considered conclusion that the impugned order dated 05.05.2025 passed by learned Judicial Magistrate, 1st Class, Patna, suffers with serious legal infirmity, coupled with the fact that entire criminal prosecution against the petitioner is not only frivolous on facts, but also malicious and vexatious. It has been held in the cases of *Salib @ Shalu @ Salim vs. State of U.P. & Ors.*, reported in **2023 (3) PLJR 389 (SC)** and *Sujoy Ghosh vs. State of Jharkhand*, reported in **2026 SCC OnLine SC 454**, by the Hon'ble Supreme Court that in cases of manifestly frivolous or vexatious proceedings, Court owes a duty to look into attending circumstances emerging from the records of the case, over and above the averments made, and if need be, with due care and circumspection, even try to read in between the lines. The factual scenario of the present case, where a grievance with police action has been unsuccessfully attempted to be connected to the petitioner with a far-fetched allegation of being done on the instruction of petitioner, who was at Mumbai at the relevant time and admittedly not even present at the place of occurrence, makes the allegation not only absurd but inherently improbable. Further,



taking of cognizance under Section 384 of the IPC in this background appears to be totally bereft of any merit.

36. Thus, the factual context, coupled with the legal perspective, brings this Court to the considered conclusion that the present case squarely falls within the ambit of categories (1), (5) and (7) of the case of *State of Haryana v. Bhajan Lal*, reported in *1992 Supp (1) SCC 335*, and is thus not fit to be sustained. The continuance of the instant criminal proceedings against the petitioner would amount to an abuse of the process of the Court. As such the entire criminal proceedings against the petitioner, including the order dated 05.05.2025 passed by learned Judicial Magistrate, 1st Class, Patna, in connection with Complaint Case No.15721(C) of 2024, is hereby quashed.

37. Accordingly, the present application along with I.A. No. 01 of 2025 stands allowed.

(Soni Shrivastava, J)

anand/-

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