

IN THE HIGH COURT OF JHARKHAND AT RANCHI
W.P.(Cr) No. 378 of 2023

Pratul Shahdeo @ Pratul Nath Shahdev Petitioner

Versus

1.The State of Jharkhand
 2. Mantu Kumar

..... Respondents

CORAM: HON'BLE MR. JUSTICE SANJAY KUMAR DWIVEDI

For the Petitioner : Mr. Ajit Kumar, Sr. Advocate
 Ms. Aprajita Bhardwaj, Advocate
 Ms. Akritee Shree, Advocate

For the State : Mr. Manoj Kumar, G.A.-III
 Mr. Deepankar Roy, A.C. to G.A.-III

For the Resp. No.2 : Mr. Sahil, Advocate

04/Dated: 03/10/2023

By order dated 05.07.2023 notice was directed to be issued upon respondent no.2 and the State was directed to file counter-affidavit.

2. Pursuant to notice, Mr. Sahil learned counsel for the respondent no.2 appeared. He submits that although he has informed the respondent no.2 for filing counter-affidavit however he has not turned up and the matter can be heard in absence of counter-affidavit.

3. Mr. Manoj Kumar, learned counsel for the respondent-State submits that counter-affidavit is ready which has not been filed as the matter was on board today.

4. In view of such submission the said counter-affidavit is taken on record.

5. Heard Mr. Ajit Kumar, learned senior counsel assisted by Ms. Aprajita, learned counsel for the petitioner, Mr. Manoj Kumar, learned counsel for the respondent-State and Mr. Sahil learned counsel for the respondent no.

2.

6. The present petition has been filed for quashing the entire criminal proceeding arising out of Balumath P.S. Case No. 93/2023 dated 23.06.2023 lodged under sections 341, 342, 323, 325, 307 of the Indian Penal code and 3/4 of the Scheduled Castes and the Scheduled Tribes (Prevention of

Atrocities) Act, 1989, pending in the Court of learned Additional Sessions Judge-I-cum-Sessions Judge, Latehar.

7. The O.P. No.2 filed the Complaint Case No. 10/2023 which was sent under section 156(3) of Cr.P.C. for registration of F.I.R. and pursuant to that Balumath P.S. Case No. 93/2023 has been lodged wherein it has been alleged that the complainant works as private driver and earns his livelihood. In the month of January, the complainant was unemployed and he informed about his unemployment to his brother-in-law Ejaj Ansari, who made the complainant meet one Ravi Raj (journalist of Hindustan). Ravi Raj informed the complainant that there is a requirement of a driver by Petitioner and his private vehicle is to be driven by staying in his home in Ranchi. Thereafter, Ravi Raj spoke to the Petitioner and on 28.01.2023 handed over Rs. 500 to the complainant and asked him to go to Machhli Ghar, next to Raj Bhawan in Ranchi. Thereafter, the complainant reached Ranchi and met the Petitioner, who stated that if the Petitioner's staff Bittu is satisfied with the complainant's driving, then the complainant will be hired. Thereafter, the complainant went for a drive with the said Bittu in Petitioner's car for around half an hour, and then the Petitioner's staff informed him that the complainant drives well and then the complainant was hired. The complainant started working as Petitioner's driver and while driving for even small mistakes the Petitioner used to abuse him with cast indicative words. The complainant got to know from Petitioner's guard and neighbors that no driver stays with the Petitioner for long time and that the Petitioner has left several of his drivers after assaulting them. The complainant got scared hearing this and on 01.02.2023 informed everything on phone to Ravi Raj who said that he will have a word with the Petitioner. In the meantime, the Petitioner spoke to the complainant politely and asked him to come with him and after going a little far, the Petitioner took car keys and locked the car and in moving car abused and assaulted the complainant. The complainant got

scared and apologized but Petitioner continuously assaulted the complainant and broke the watch being worn by the complainant on his left wrist, which caused a bleeding injury on Petitioner's hand. The Petitioner wiped his blood on complainant's clothes and threatened that he would take the complainant to police station and send him to jail. The complainant somehow unlocked the car and fled from the scene and called Ravi Raj, who asked the complainant to return and sent Rs. 1,000 to the complainant on phone pe. Thereafter, the complainant went to Machhli Ghar to collect his luggage but he was not allowed to enter and then the complainant out of fear fled to Chandwa and got medical treatment at Triveni Doctor (near Gola School). The complainant informed everything to his brother-in-law Ejaj Ansari. The complainant did not give any application to Chandwa P.S. since the Petitioner is a resourceful person and after being assured by his brother-in-law the Petitioner gave an application to Chandwa P.S. After returning to Murpa Village also the Petitioner used to call the complainant on his mobile phone and abused the complainant and threatened to kill him.

8. Mr. Ajit Kumar, learned senior counsel for the petitioner submits that the petitioner is a spokesperson of a political party and he is involved in social and political work in political work. By way of referring complaint petition he submits that entire occurrence is alleged to have occurred in the city of Ranchi whereas the complaint case has been filed at Latehar. He submits that the learned court without applying the judicial mind sent the matter under section 156(3) of Cr.P.C. and pursuant to that the said case has been registered. He submits that the malafiedly the present F.I.R. has been registered. He submits that even section of 307 I.P.C. and 3 and 4 of Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989, have been inserted. He submits that the entire occurrence is said to be occurred in a car in view of that no public view is there. He submits that by way

of forum shopping the case has been lodged at Latehar only to harass the petitioner. He submits that ingredient of sections 3 and 4 of Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 is not made out as nothing has occurred in public view. He submits that even it has not been disclosed in the complaint petition that the petitioner is not belonging the caste of the complainant which is one of the ingredient of making offence under the SC/ST Act. On these grounds, he submits that the entire criminal proceeding may be quashed.

9. On the other hand, Mr. Manoj Kumar, learned counsel for the respondent-State by way of referring the counter-affidavit submits that investigation is going on and the witnesses have supported the case. He submits that at this stage this Court may not interfere as only F.I.R. is under challenge. He submits that parameters of quashing the F.I.R. has been set at rest by several judgments of the Hon'ble Supreme court. He relied in the case of **"Ramveer Upadhyay & Anr. Vs. State of U.P. & Anr."** 2022 Live Law **396 SC (Para 39)**. On these grounds he submits that this Court may not interfere at this stage.

10. Mr. Sahil, learned counsel for the respondent no. 2 submits that occurrence has occurred in a car and in that view of the matter public view is made out. He submits that the occurrence is continuing one and in view of that after the investigation everything will come. He submits that at this stage this Court may not interfere and quash the entire criminal proceeding. He submits that so far power under section 482 Cr.P.C. and Article 226 of the Constitution of India is concerned, that has been set at rest by several judgments of the Hon'ble Supreme Court and at this stage roaming enquiry to quash the F.I.R. is not required which is well-settled and to buttress his argument he relied in the case of **"Satvinder Kaur Vs. State (Govt. of NCT of Delhi) & Another"** (1999) 8 SCC 728, (para 14). On these grounds, he submits that this Court

may not interfere at this stage.

11. In view of above submissions of the learned counsel for the parties, the Court has gone through the materials on record. In the present case only F.I.R. is under challenge. There are parameters of quashing the F.I.R. which is well settled if the case is filed in abuse of process of law the Court can interfere however, the circumspection is required to be maintained by the court in quashing the proceeding arising out of F.I.R. This aspect of the matter is well settled. There is no doubt in the mind of the court and in view of that this Court is proceeding further to examine the argument made by the learned counsel for the parties. Looking into the complaint case the Court finds that entire allegation is made in the district of Ranchi. In the complaint petition itself disclosed that the petitioner filed petition before the police station at Chandwa, inspite of that present case has been filed at Latehar. Thus, prima facie it appears that cause of action if any is there that of district of Ranchi. It appears by way of forum shopping the case has been filed at Latehar and this aspect of the matter has been considered by the Hon'ble Supreme Court in the case of **"Vijay Kumar Ghai and others Vs. State of West Bengal and Others, (2022) 7 SCC 124** wherein para 11 to 14, 24 and 25 it has been held as under:-

"11. Predominantly, the Indian Judiciary has time and again reiterated that forum shopping takes several hues and shades but the concept of "forum shopping" has not been rendered an exclusive definition in any Indian statute. Forum shopping as per Merriam-Webster Dictionary is:

"The practice of choosing the court in which to bring an action from among those courts that could properly exercise jurisdiction based on determination of which court is likely to provide the most favourable outcome."

12. The Indian Judiciary's observation and obiter dicta has aided in streamlining the concept of forum shopping in the Indian legal system. This Court has condemned the practice of forum shopping by litigants and termed it as an abuse of law and also deciphered different categories of forum shopping.

13. A two-Judge Bench of this Court in Union of India v. Cipla Ltd. [Union of India v. Cipla Ltd., (2017) 5 SCC

262] has laid down factors which lead to the practice of forum shopping or choice of forum by the litigants which are as follows : (SCC pp. 318-20, paras 148-51 & 155)

"148. A classic example of forum shopping is when litigant approaches one court for relief but does not get the desired relief and then approaches another court for the same relief. This occurred in *Rajiv Bhatia v. State (NCT of Delhi)* [*Rajiv Bhatia v. State (NCT of Delhi)*, (1999) 8 SCC 525] . The respondent mother of a young child had filed a petition for a writ of habeas corpus in the Rajasthan High Court and apparently did not get the required relief from that Court. She then filed a petition in the Delhi High Court also for a writ of habeas corpus and obtained the necessary relief. Notwithstanding this, this Court did not interfere with the order [*Priyanka Bhatia v. State (NCT of Delhi)*, 1999 SCC OnLine Del 192] passed by the Delhi High Court for the reason that this Court ascertained the views of the child and found that she did not want to even talk to her adoptive parents and therefore the custody of the child granted by the Delhi High Court to the respondent mother was not interfered with. The decision of this Court is on its own facts, even though it is a classic case of forum shopping.

149. In *Arathi Bandi v. Bandi Jagadrakshaka Rao* [*Arathi Bandi v. Bandi Jagadrakshaka Rao*, (2013) 15 SCC 790 : (2014) 5 SCC (Civ) 475] this Court noted that jurisdiction in a court is not attracted by the operation or creation of fortuitous circumstances. In that case, circumstances were created by one of the parties to the dispute to confer jurisdiction on a particular High Court. This was frowned upon by this Court by observing that to allow the assumption of jurisdiction in created circumstances would only result in encouraging forum shopping.

150. Another case of creating circumstances for the purposes of forum shopping was *World Tanker Carrier Corpn. v. SNP Shipping Services (P) Ltd.* [*World Tanker Carrier Corpn. v. SNP Shipping Services (P) Ltd.*, (1998) 5 SCC 310] wherein it was observed that the respondent/plaintiff had made a deliberate attempt to bring the cause of action, namely, a collision between two vessels on the high seas within the jurisdiction of the Bombay High Court. Bringing one of the vessels to Bombay in order to confer jurisdiction on the Bombay High Court had the character of forum shopping rather than anything else.

151. Another form of forum shopping is taking advantage of a view held by a particular High Court in contrast to a different view held by another High Court. In *Ambica Industries v. CCE* [*Ambica Industries v. CCE*, (2007) 6 SCC 769] the assessee was from Lucknow. It challenged an order [*Ambica Industries v. CCE*, 2003 SCC OnLine CESTAT 1365] passed by the Customs, Excise and Service Tax Appellate Tribunal ("CESTAT") located in Delhi before the Delhi High Court. CESTAT had jurisdiction over the State of Uttar Pradesh, NCT of Delhi and Maharashtra. The Delhi High Court did not entertain the proceedings initiated by the assessee for want of territorial jurisdiction. Dismissing the assessee's appeal this Court gave the example of an assessee affected by an assessment order in Bombay invoking the jurisdiction of the

Delhi High Court to take advantage of the law laid down by the Delhi High Court or an assessee affected by an order of assessment made at Bombay invoking the jurisdiction of the Allahabad High Court to take advantage of the law laid down by it and consequently evade the law laid down by the Bombay High Court. It was said that this could not be allowed and circumstances such as this would lead to some sort of judicial anarchy.

155. The decisions referred to clearly lay down the principle that the court is required to adopt a functional test vis-à-vis the litigation and the litigant. What has to be seen is whether there is any functional similarity in the proceedings between one court and another or whether there is some sort of subterfuge on the part of a litigant. It is this functional test that will determine whether a litigant is indulging in forum shopping or not."

14. *Forum shopping has been termed as disreputable practice by the courts and has no sanction and paramountcy in law. In spite of this Court condemning the practice of forum shopping, Respondent 2 filed two complaints i.e. a complaint under Section 156(3)CrPC before the Tis Hazari Court, New Delhi on 6-6-2012 and a complaint which was eventually registered as FIR No. 168 under Sections 406, 420, 120-BIPC before PS Bowbazar, Calcutta on 28-3-2013 i.e. one in Delhi and one complaint in Kolkata. The complaint filed in Kolkata was a reproduction of the complaint filed in Delhi except with the change of place of occurrence in order to create a jurisdiction.*

24. *This Court in G. Sagar Suri v. State of U.P. [G. Sagar Suri v. State of U.P., (2000) 2 SCC 636 : 2000 SCC (Cri) 513] observed that it is the duty and obligation of the criminal court to exercise a great deal of caution in issuing the process, particularly when matters are essentially of civil nature.*

25. *This Court has time and again cautioned about converting purely civil disputes into criminal cases. This Court in Indian Oil Corpn. [Indian Oil Corpn. v. NEPC India Ltd., (2006) 6 SCC 736 : (2006) 3 SCC (Cri) 188] noticed the prevalent impression that civil law remedies are time consuming and do not adequately protect the interests of lenders/creditors. The Court further observed that : (Indian Oil Corpn. case [Indian Oil Corpn. v. NEPC India Ltd., (2006) 6 SCC 736 : (2006) 3 SCC (Cri) 188] , SCC p. 749, para 13)*

"13. ... Any effort to settle civil disputes and claims, which do not involve any criminal offence, by applying pressure through criminal prosecution should be deprecated and discouraged."

12. Looking into further averments made in the complaint petition, it is crystal clear that there is no averment to the effect that the petitioner is not belonging to the caste of the complainant. Reference may be made to the

case of " **Gorige Pentaiah Vs. State of Andhra Pradesh & Others** (2008) 12 SCC 531 wherein para 6 it has been held as under:-

"6. In the instant case, the allegation of Respondent 3 in the entire complaint is that on 27-5-2004, the appellant abused them with the name of their caste. According to the basic ingredients of Section 3(1)(x) of the Act, the complainant ought to have alleged that the appellant-accused was not a member of the Scheduled Caste or a Scheduled Tribe and he (Respondent 3) was intentionally insulted or intimidated by the accused with intent to humiliate in a place within public view. In the entire complaint, nowhere it is mentioned that the appellant-accused was not a member of the Scheduled Caste or a Scheduled Tribe and he intentionally insulted or intimidated with intent to humiliate Respondent 3 in a place within public view. When the basic ingredients of the offence are missing in the complaint, then permitting such a complaint to continue and to compel the appellant to face the rigmarole of the criminal trial would be totally unjustified leading to abuse of process of law."

13. Thus the ingredient of SC/ST Act is absent. In the complaint case at first page itself the learned court has noted that the matter is sent for investigation and institution of F.I.R. as per provision of Section 156(3) of Cr.P.C. This is not a separate order for registration of said F.I.R. There is no doubt that the learned courts are overloaded with the court work. There is no harm of passing such order under Section 156(3) of Cr.P.C and that is option available to the learned court. However, in exercising of said power under section 156 (3) of Cr.P.C., judicial mind is required to be applied which is lacking in the case in hand. There is no separate order under section 156(3) Cr.P.C. Merely the endorsement is there at the first page of the complaint. The Hon'ble Supreme Court in the case of " **Priyanka Srivastava & Another Vs. State of Uttar Pradesh & Others**" reported in (2015) 6 SCC 287 held that there should be application of mind by passing an order under section 156(3) of Cr.P.C. In that case the Hon'ble Supreme Court has dealt with several judgments and law as laid down in para 27, 29, 30 and 31 which are quoted here-in-below:-

"27. Regard being had to the aforesaid enunciation of law, it needs to be reiterated that the learned Magistrate has to remain vigilant with regard to the allegations made and the nature of allegations and not to issue directions without proper application of mind. He has also to bear in mind that sending the matter would be conducive to justice and then he may pass the requisite order. The present is a case where the accused persons are serving in high positions in the Bank. We are absolutely conscious that the position does not matter, for nobody is above the law. But, the learned Magistrate should take note of the allegations in entirety, the date of

incident and whether any cognizable case is remotely made out. It is also to be noted that when a borrower of the financial institution covered under the SARFAESI Act, invokes the jurisdiction under Section 156(3) CrPC and also there is a separate procedure under the Recovery of Debts Due to Banks and Financial Institutions Act, 1993, an attitude of more care, caution and circumspection has to be adhered to.

29. *At this stage it is seemly to state that power under Section 156(3) warrants application of judicial mind. A court of law is involved. It is not the police taking steps at the stage of Section 154 of the Code. A litigant at his own whim cannot invoke the authority of the Magistrate. A principled and really grieved citizen with clean hands must have free access to invoke the said power. It protects the citizens but when pervert litigations takes this route to harass their fellow citizens, efforts are to be made to scuttle and curb the same.*

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."*

14. In para 27 of the said judgment, the Hon'ble Supreme Court has held that the learned Magistrate has to remain vigilant with regard to the allegations made and the nature of allegations and not to issue direction without proper application of judicial mind.

15. If the entire occurrence is said to be occurred in the city of

Ranchi at the time of sending the matter under section 156(3) of Cr.P.C. by the learned court at Latehar which was required to look into further whether order is required to be passed under section 156(3) of Cr.P.C. which suggests that in absence of any judicial mind the said order has been passed.

16. There is no doubt that the Court is required to pass order with regard to circumsppection as has been held in several judgments of the Hon'ble Supreme Court as well as High Court and two judgments relied by the learned counsel for the respondent-State as well as respondent no.2 are not in dispute, that is well settled provision of law. However, at the same time if a malicious prosecution is there and in absence of any proper application of judicial mind if Court comes to the conclusion that case has been maliciously filed the Court can pass appropriate order.

17. Even if the First Information Report, which cannot be treated as an encyclopaedia, contains only certain facts, which could genuinely lead to a reasonable belief that a cognizable offence had been committed, the High Court must be slow in exercising its inherent powers to quash the first information report and stifle the investigation. In other words, even if the first information report does not come within the ambit straightway of a cognizable offence, if the material collected subsequently disclose the commission of a cognizable offence, the police cannot be halted in their tracks. If the first information report does not disclose a cognizable offence the Court shall exercise its jurisdiction, once it is satisfied that even when challenged the investigating agency, on the basis of all the material collected, was unable to show any reasonable suspicion of the commission of cognizable offence, and a patent harassment of the accused was obvious amounting to clear abuse of power by the police. The salutary inherent power will then have to be necessarily exercised, as otherwise the contemplation to secure the ends of justice in Section 482, CrPC and under Article 226 of the Constitution of India, would

became a dead letter.

18. In the recent judgment of the Hon'ble Supreme Court in the case of "**Haji Iqbal @ Bala through S.P.O.A. Vs. State of U.P. and Others**" (2023) SCC Online 946 in para 15 it has been held as under:-

"15. 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. In view of above judgment, it is well settled that if the case is brought into the notice of the High court the High Court is further required to look into the facts and reasons and read the allegation in between lines. The present case is well planned the complaint has been filed maliciously. The complainant filed the said complaint in such a way that ingredients every sections may be made out. In view of that the Court is required to look into read the allegation in between lines in view of **Haji Iqbal @ Bala (supra)**.

19. Further coming to the facts of the present case the entire allegations are made out at Ranchi wherein the case has been filed at Latehar. This further suggests that by way of forum shopping the case has been filed at

Latehar and in view of that case of the petitioner is covered with the case of ***Vijay Kumar Ghai (supra)***.

20. To put criminal law in motion by examining witnesses is also deprecated by the Hon'ble Supreme Court in the case of ***'Pepsi Foods Ltd. V. Special Judicial Magistrate' (1998) 5 SCC 749***. The SC/ST Act is meant for protection of schedule castes and schedule tribes and it is not meant for setting the score by way of filing the false case.

21. In view of above facts, reasons and analysis it appears that the case has been maliciously filed at Latehar and the learned court without applying the judicial mind has sent the complaint under section 156(3) of Cr.P.C. Accordingly, the entire criminal proceeding arising out of Balumath P.S. Case No. 93/2023 dated 23.06.2023, pending in the Court of learned Additional Sessions Judge-I-cum-Sessions Judge, Latehar, is quashed.

22. This petition stands allowed and disposed of. Pending I.A, if any, stands disposed of. Interim order is vacated.

(Sanjay Kumar Dwivedi, J.)

Satyarthi/A.F.R.