IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.70967 of 2024

Arising Out of PS. Case No.-109 Year-2019 Thana- PATNA CITY CHOWK District- Patna

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1. Sushil Jhunjhunwala Son of Parmeshwar Lal Jhunjhunwala Resident of Parmeshwar Place, Infront of Satyanarayan Temple, Patna City, Ward No.66, P.O. - Patna City, P.S. - Chowk, District - Patna - 800008
2. Rishabh Jhunjhunwala Son of Sudhir Jhunjhunwala Resident of Parmeshwar Place, Infront of Satyanarayan Temple, Patna City, Ward No.66, P.O. - Patna City, P.S. - Chowk, District - Patna - 800008

... ... Petitioner/s

Versus

1. The State of Bihar Bihar
2. Kiran Devi Jhunjhunwala Wife of Ganganand Ji Jhunjhunwala Resident of Mohalla - Kathautiya Gali, Patna City, P.O. - Patna City, P.S. - Chowk, District - Patna - 800008

... ... Opposite Party/s

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Appearance :
For the Petitioner/s : Mr. Amit Narayan, Adv.
Mr. Jeetendra Narayan, Adv.
Mr. Abhishek Kumar, Adv.
For the State : Mr. Rana Randhir Singh, APP

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CORAM: HONOURABLE JUSTICE SMT. SONI SHRIVASTAVA
CAV JUDGMENT
Date : 30-09-2026

Heard learned counsel for the petitioners and learned APP for the State.

2. The present application has been filed for quashing of the order dated 01.08.2022 passed by the learned Additional Chief Judicial Magistrate-IV, Patna City, Patna in Chowk P.S Case No. 109 of 2019, whereby cognizance was taken against the petitioners for the offences under Sections 448, 341, 323 and 506 r/w 34 of the Indian Penal Code.

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3. From perusal of the records, it appears that the proceedings of the present case have not progressed from the stage of cognizance as the proceedings were stayed by the Hon'ble Court vide an order dated 07.10.2024. Further, from the order dated 24.09.2026, it also appears that despite issuance of notice and valid service of the same, none appears on behalf of the opposite party no. 2.

4. The brief facts of the case are that the informant, Kiran Devi Jhunjhunwala, alleged that following the kidnapping of her husband, Gajanandji Jhunjhunwala, persons were repeatedly demanding money from her and sending their staff to her house during the evening hours. It is further alleged that, on a Saturday evening, the petitioners, namely, Sushil Jhunjhunwala (Petitioner No. 1) and Rishab Jhunjhunwala (Petitioner No. 2), came to informant's house and demanded payment of Rs. 2,11,354/-, stated to be due from her husband. When the informant expressed her inability to pay the said amount, the petitioners allegedly threatened to kill her and the other surviving members of her family and assaulted her with fists. On being intervened by her mother-in-law, the informant managed to save herself.

5. Learned Counsel for the petitioners has submitted, at outset, that both parties are agnates and there is a dispute between

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them with regard to an ancestral property, and the present case has been instituted with an ulterior motive to settle personal scores. The informant has very cleverly suppressed her relationship with the petitioners and also the factum of an ongoing dispute between them with regard to property. In this connection, Annexure-3, which is a counter FIR, bearing Chowk P.S. Case No. 143 of 2029 dated 29.03.2019, lodged by petitioner no.1 has been pointed out indicating the dispute between the parties and the pressure being exerted upon the petitioners with regard to registering their ancestral property in the name of daughters, son-in-law and brother-in-law of the present informant (opposite party no. 2). Reference has also been made to some affidavited representations submitted before the police administration, much prior to the present FIR (Annexure-P/4 series to the supplementary affidavit). Thus, the present prosecution has been filed with *mala fide* intention to wreak vengeance. In this regard, reliance has been placed upon the case of **State of Haryana & Ors. Vs. Bhajan Lal & Ors.**, reported in **1992 Supp (1) SCC 335**.

6. It is further submitted that the allegations as alleged in the present FIR are vague to the extent that money was being demanded and staff were being sent to the informant’s house, without disclosing the date of incident or the identity of the persons

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allegedly making such demands or sending the staff. The petitioners are in fact no way connected with the alleged earlier incident of kidnapping and by way of the orders passed by the Hon'ble High Court in a Habeas Corpus application filed by the opposite party no. 2, it has been contended that these orders do not in any manner, reflect involvement of the petitioners in the said case. As such, the connection proposed to be drawn in the present case with respect to an earlier case of kidnapping, is totally imaginary and baseless. The petitioners in the present case have been implicated on the basis of bald and unsupported, unsubstantiated allegations, by way of any specific material, as such, the ingredients of the alleged offences are not made out against the petitioners.

7. It is next submitted by learned counsel on behalf of the petitioners that the impugned order has been passed in a mechanical manner, without proper application of judicial mind and cognizance has been taken under the same Sections under which the FIR was registered and the charge-sheet filed, in absence of any material being disclosed in the impugned order. Even from material collected during course of investigation, the present prosecution appears to be substantially based upon the statements of interested witnesses.

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8. Learned counsel, relying upon the judgment of the Hon'ble Supreme Court in **M/s Pepsi Foods Ltd. & Anr. Vs. Judicial Magistrate**, reported in **(1998) 5 SCC 749**, has submitted that the criminal process cannot be set in motion mechanically and the Court must reflect application of judicial mind while summoning an accused. Reliance has further been placed upon the case of **Inder Mohan Goswami & Anr. Vs. State of Uttaranchal & Ors.**, reported in **(2007) 12 SCC 1**, wherein it has been held that court while exercising power under Section 482 Cr.P.C. must ensure that criminal prosecution is not used as an instrument for seeking private vendetta.

9. Learned APP for State, however, opposes the present application by submitting that at the stage of cognizance, whether a *prima facie* case is made out or not, is only to be seen and considered. It has been submitted that the allegations make out a *prima facie* case against the petitioners, as such, there is no illegality in the impugned order.

10. I have heard the contentions raised on behalf of the petitioners and the State and have also gone through the materials placed on record. The narration of facts in the First Information Report, upon perusal, appear to be vague and unclear. There is no date of occurrence mentioned therein, and the connection made to

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an earlier kidnapping case also appears to be absurd and no details have been mentioned as to when and who were demanding money from the informant (opposite party no. 2). There is merely a mention that the said occurrence took place on Saturday, while the FIR was lodged on 08.03.2019, which according to the calendar of the year 2019 was a Friday. The inference which may be drawn here is that the FIR is a belated document lodged after about six days of the occurrence, as the earlier Saturday would be 02.03.2019. Thus, the FIR not only suffers with the vice of delay but also absolute vagueness with respect to the date, time and nature of allegations.

11. This Court has also noted the submission that as a matter of fact, the contesting parties are agnates having dispute with regard to ancestral property, which stands supported by the FIR, bearing Chowk P.S. Case no. 143/2019 lodged by petitioner no.1, against the informant (opposite party no. 2) and others. In the background of such disputes, the allegations made against the petitioners do not appear to be convincing at all. Moreover, at the face of allegation levelled, the ingredients of the offences as alleged, are not made out as the present case neither appears to be one of house-trespass, wrongful restraint or causing any hurt as contemplated under Section 323 of the IPC, as the allegations at no

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point of time disclose that any hurt was caused to any person. In view of the fact that the case of the prosecution is that of the petitioners coming to the house of the opposite party no. 2, there is no question of causing any wrongful restraint which is evident from the language of Section 339 of the IPC itself defining wrongful restraint as “Obstruction caused to any person from proceeding in any direction in which that person has a right to proceed.” Moreover, the offences for house-trespass and wrongful restraint, in most cases would not go hand in hand and would rather be mutually exclusive and especially, in the facts of the present case. Further, in the background of the relationship and dispute between the parties, the other allegations also seem to be purely ornamental.

12. The impugned order taking cognizance of the alleged offences also does not reflect application of judicial mind and is more in the nature of a mechanical order without looking into the vagueness and absurdity of the FIR itself. It has been held by the Hon’ble Apex court in the case of **M/S Pepsi Foods Ltd. & Anr.** (supra), that summoning of an accused is a serious matter and criminal law should not be set in motion as a matter of course. The order of the Magistrate summoning the accused must reflect application of judicial mind. It is settled that when an allegation in

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complaint, even if taken at face value, do not prima facie constitute an offence, criminal proceedings are liable to be quashed.

13. The Hon'ble Apex Court while enumerating the guidelines wherein the inherent power of the Court should be exercised, in the case of **Bhajan Lal** (supra), included the following categories of cases:

> "102. ……...
>
> (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.
>
> ……...
>
> (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.
>
> …….
>
> (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. Now, reverting to the facts of present case, it is gathered that the present FIR has come to be lodged in the backdrop of a civil dispute relating to ancestral property and the FIR itself is manifested with vagueness, absurdity of allegations and is apparently attended with malafide. None of the offences, as alleged, are made out even considering the case of the prosecution

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at its face value, especially in the background of other attending factors and circumstances.

15. The Hon'ble Apex court in the case of **Salib @ shalu @ Salim Vs. State of U.P. & Ors.** reported in **(2023) 20 SCC 194** has also held that there are certain cases relating to frivolous and vexatious allegation where the Court owes a duty to look into the attending circumstances also**.**

> "26. 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

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> and circumspection try to read in between the lines. The Court while exercising its jurisdiction under Section 482CrPC 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.……...”

16. Thus, considering the entire factual context vis-à-vis the settled legal position, this Court is of considered view that the case of the petitioners falls within the ambit of guidelines to be considered as laid down in the case of **Bhajanlal** (supra) and thus the inherent powers of this Court ought to be invoked and exercised for the purpose of quashing the present prosecution. As such, the impugned order 01.08.2022 passed by the learned Additional Chief Judicial Magistrate-IV, Patna City, Patna in Chowk P.S Case No. 109 of 2019 and entire proceedings arising therefrom stands quashed.

17. Accordingly, the present application stands allowed.

(Soni Shrivastava, J)

devendra/-

AFR/NAFR	NAFR
CAV DATE	24.09.2026
Uploading Date	30.09.2026
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