

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.18047 of 2012

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Binod Kumar Yadav S/O Late Heera Lal Yadav Resident Of Village-
Sukhasthan, Aran, P.S- Saharsa, Block- Satar Kataiya, District- Saharsa.

.... Petitioner

Versus

The State Of Bihar

.... Opposite Party

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Appearance :

For the Petitioner/s : Mr. Shree Kant Pandey, Adv.

Mr. Sanjay Parasmani, Adv.

For the Opposite Party/s : Mr. Madhuranand Jha, APP

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI

ORAL ORDER

6 27-07-2015 Heard learned counsel for the petitioner and learned
Additional Public Prosecutor.

Petitioner has prayed for quashing of the prosecution of
Bihra P. S. Case No. 40 of 2012.

As per written report submitted by Block Education
Officer, it is apparent that on account of some sort of dispute
regarding counting of length of service, ultimately the petitioner
was directed to be retired from the service from the month of
January of 2012 and further, on account of retaining of all the
relevant registers by the petitioner , who was Headmaster-cum-
Drawing and Disbursing Officer of Middle School, Satar Kataiya,
ultimately led registration of Bihra P. S. Case No. 40 of 2012
under Sections 409 and 353 of IPC.

It has been submitted on behalf of the petitioner that



instant prosecution happens to be mala fide which has purposely been instituted at the instance of Block Education Officer after having annoyed with filing of CWJC No. 5424 of 2012 whereupon the department was noticed vide order dated 23.3.2012 (Annexure-9) and then thereafter instant prosecution has been launched on 6.4.2012. Furthermore, it has been submitted that vide Memo No. 572-7 dated 6.3.2012 whereby and whereunder he has been superannuated retrospectively from January 2012 (Annexure-9 series) has already been set aside on account thereof, the petitioner will be deemed to be in service in its continuance without having any sort of infringement during the intervening period and that being so, instant prosecution does not justified its subsistence.

At the other end, learned Additional Public Prosecutor opposed the prayer and submitted that though subsequently, the letter by which the petitioner has been directed to superannuate is found erased. However, during the intervening period, while the petitioner was under the stage of superannuation, retention of necessary documents was against the law and that being so, instant prosecution is fit to be retained.

In *Amit Kapoor vs. Ramesh Chander and another* reported in (2012) 9 SCC 460, the Hon'ble Apex Court has

identified following criteria for application of inherent power under the guise of Section 482 Cr.P.C. :-

“27. Having discussed the scope of jurisdiction under these two provisions i.e. Section 397 and Section 482 of the Code and the fine line of jurisdictional distinction, now it will be appropriate for us to enlist the principles with reference to which the courts should exercise such jurisdiction. However, it is not only difficult but is inherently impossible to state with precision such principles. At best and upon objective analysis of various judgments of this Court, we are able to cull out some of the principles to be considered for proper exercise of jurisdiction, particularly, with regard to quashing of charge either in exercise of jurisdiction under Section 397 or Section 482 of the Code or together, as the case may be:

27.1. Though there are no limits of the powers of the Court under Section 482 of the Code but the more the power, the more due care and caution is to be exercised in invoking these powers. The power of quashing criminal proceedings, particularly, the charge framed in terms of Section 228 of the Code should be exercised very sparingly and with circumspection and that too in the rarest of rare cases.

27.2. The Court should apply the test as to whether the uncontroverted allegations as made from the record of the case and the documents submitted therewith prima facie establish the offence or not. If the allegations are so patently absurd and inherently improbable that no prudent person can ever reach such a conclusion and where the basic ingredients of a criminal offence are not satisfied then the Court may interfere.

27.3. The High Court should not unduly interfere. No meticulous examination of the evidence is needed for considering whether the case would end in conviction or not at the stage of framing of charge or quashing of charge.

27.4. Where the exercise of such power is absolutely essential to prevent patent miscarriage of justice and for correcting some grave error that might be committed by the subordinate courts even in such cases, the High Court should be loath to interfere, at the threshold, to throttle the prosecution in exercise of its inherent powers.

27.5. Where there is an express legal bar enacted in any of the provisions of the Code or any specific law in force to the very initiation or institution and continuance of such criminal proceedings, such a bar is intended to provide specific protection to an accused.

27.6. The Court has a duty to balance the freedom of a person and the right of the complainant or prosecution to investigate and prosecute the offender.

27.7. The process of the court cannot be permitted to be used for an oblique or ultimate/ulterior purpose.

27.8. Where the allegations made and as they appeared from the record and documents annexed therewith to predominantly give rise and constitute a “civil wrong” with no “element of criminality” and does not satisfy the basic ingredients of a criminal offence, the court may be justified in quashing the charge. Even in such cases, the court would not embark upon the critical analysis of the evidence.

27.9. Another very significant caution that the courts have to observe is that it cannot examine the facts, evidence and materials on record to determine whether there is sufficient material on the basis of which the case would end

in a conviction; the court is concerned primarily with the allegations taken as a whole whether they will constitute an offence and, if so, is it an abuse of the process of court leading to injustice.

27.10. It is neither necessary nor is the court called upon to hold a full-fledged enquiry or to appreciate evidence collected by the investigating agencies to find out whether it is a case of acquittal or conviction.

27.11. Where allegations give rise to a civil claim and also amount to an offence, merely because a civil claim is maintainable, does not mean that a criminal complaint cannot be maintained.

27.12. In exercise of its jurisdiction under Section 228 and/or under Section 482, the Court cannot take into consideration external materials given by an accused for reaching the conclusion that no offence was disclosed or that there was possibility of his acquittal. The Court has to consider the record and documents annexed therewith by the prosecution.

27.13. Quashing of a charge is an exception to the rule of continuous prosecution. Where the offence is even broadly satisfied, the Court should be more inclined to permit continuation of prosecution rather than its quashing at that initial stage. The Court is not expected to marshal the records with a view to decide admissibility and reliability of the documents or records but is an opinion formed prima facie.

27.14. Where the charge-sheet, report under Section 173(2) of the Code, suffers from fundamental legal defects, the Court may be well within its jurisdiction to frame a charge.

27.15. Coupled with any or all of the above, where the Court finds that it would amount to abuse of process of the Code or that the interest of justice favours, otherwise it may quash the charge. The power is to be exercised *ex debito justitiae* i.e. to do real and substantial justice for administration of which alone, the courts exist.

[Ref. *State of W.B. v. Swapan Kumar Guha* (1982)1 SCC 561; *Madhavrao Jiwajirao Scindia v. Sambhajirao Chandrojirao Angre* (1988)1 SCC 692; *Janata Dal v. H.S. Chowdhary* (1992)4 SCC 305; *Rupan Deol Bajaj v. Kanwar Pal Singh Gill* (1995) 6 SCC 194; *G. Sagar Suri v. State of U.P.* (2000) 2 SCC 636; *Ajay Mitra v. State of M.P.* (2003)3 SCC 11; *Pepsi Foods Ltd. v. Special Judicial Magistrate* (1998)5 SCC 749; *State of U.P. v. O.P. Sharma* (1996)7 SCC 705; *Ganesh Narayan Hegde v. S. Bangarappa* (1995)4 SCC 41; *Zandu Pharmaceutical Works Ltd. v. Mohd. Sharaful Haque* (2005)1 SCC122; *Medchl Chemicals & Pharma (P) Ltd. v. Biological E. Ltd.* (2000)3 SCC 269; *Shakson Belthissor v. State of Kerala* (2009)14 SCC 466; *V.V.S. Rama Sharma v. State of U.P.* (2009)7 SCC 234; *Chunduru Siva Ram Krishna v. Peddi Ravindra Babu* (2009)11 SCC 203; *Sheonandan Paswan v. State of Bihar* (1987)1 SCC 288; *State of Bihar v. P.P. Sharma* (1992) Supp (1) SCC 222; *Lalmuni Devi v. State of Bihar* (2001))2 SCC 17; *M. Krishnan v. Vijay Singh* (2001)8 SCC 645; *Savita v. State of Rajasthan* (2005)12 SCC 338 and *S.M. Datta v. State of Gujarat* (2001)7 SCC 659]

27.16. These are the principles which individually and preferably cumulatively (one or more) be taken into

consideration as precepts to exercise of extraordinary and wide plenitude and jurisdiction under Section 482 of the Code by the High Court. Where the factual foundation for an offence has been laid down, the courts should be reluctant and should not hasten to quash the proceedings even on the premise that one or two ingredients have not been stated or do not appear to be satisfied if there is substantial compliance with the requirements of the offence.”

Considering the rival contention as well as considering the fact coming out from Annexure-9 instant prosecution happens to be after notice to the State for filing counter affidavit and subsequently thereof, as per Annexure-9 series Memo No. 572-7 dated 6.3.2012 whereby and whereunder the petitioner has been superannuated is found quashed vide order dated 6.3.2013 in C.W.J.C. No. 5429 of 2012 (Annexure-10). Ultimately, recognizes the status of the petitioner in its continuation of service and that being so, instant prosecution even if, allowed to survive will not serve any fruitful purpose and consequent thereupon, presence of Bihra P. S. Case No. 40 of 2012 does not find any favour and is, accordingly, quashed. The instant petitioner is allowed.

(Aditya Kumar Trivedi, J)

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