

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.44584 of 2012

Arising out of P. S. Case No. -118 Year- 2007 Thana -Nokha District- SASARAM (ROHTAS)

=====

Shailesh Singh @ Shailesh Kumar, son of Jay Nandan Prasad Singh, resident of
Plot no.C-1 Industrial Area Patliputra, Police Station-Patliputra, Patna

.... Petitioner/s

Versus

State of Bihar & Anr

.... Opposite Party/s

=====

Appearance :

For the Petitioner/s : Mr. Jitendra Prasad Singh-Advocate
Mr. Arvind Kumar Pandey-Advocate

For the Opposite Party/s: Mr. Suresh Prasad Singh-A.P.P.

=====

CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI

CAV ORDER

Date: 12-08-2015

Petitioner has challenged the order dated 18.06.2010 passed by the Judicial Magistrate, 1st Class, Sasaram by taking cognizance of an offence punishable under Section 420 of the I.P.C. and summoning the petitioner including others to face trial therefor in connection with Complaint Case no.C-39 of 2010.

2. At an initial stage, Complaint Case no.897 of 2007 was filed by Opposite Party no.2, Ras Bihari Singh, which was sent to a local police for registration as well as investigation whereupon Nokha P. S. Case no.118 of 2007 was registered. After concluding investigation, final form was submitted, which was accepted. At the other end, protest petition pending since before was registered as Complaint Case bearing C-39 of 2010 whereupon enquiry under Section 202 Cr.P.C. commenced by a Magistrate where, the complaint



was transferred in terms of Section 192 Cr.P.C. During course of enquiry apart from Solemn Affirmation of the complainant, witnesses were also examined and then thereafter, by the order impugned learned Magistrate took cognizance of an offence punishable under Section 420 I.P.C. as well as summoned the petitioner including others, on account thereof, which has been challenged under instant petition.

3. The facts of the case as is evident from the narration of the Complaint Petition is that Opposite Party no.2/ Complainant is owner of a truck, a public carrier, bearing registration no.BR-24G-0223. Accused no.4, Santosh Mahto was employed as driver while witness Brij Mohan Singh was Khalasi. Then, it has been disclosed that on 05.07.2007 while the truck was in a way to Shiv Shambhu Roller Flour Mill having 150 bags of wheat along with complainant as well as Prakash Singh and as soon as reached near canal office over Ara-Sasaram Road was intercepted by a Sumo, which was occupied by eight persons, out of whom, he identified three persons namely Jaipal Singh, Shailesh Singh and Mukti Sah. Shailesh Singh happens to be an employee of Financer Maurya Motor Limited, Industrial Area, Patliputra. The accused persons disclosed that instalment of Rs.48,000/- is due and on account thereof, they are carrying the truck. They further directed to come with Rs.48,000/- at the garage of Jaipal



Singh, where the truck will be and get the truck after paying the aforesaid amount. Accordingly, complainant had gone to the garage of Jaipal Singh along with Rs.48,000/- on the following day where he did not find the accused as well as truck. He also contacted the Financer, who denied the same. It has also been disclosed that he had purchased the aforesaid truck in the year 2005 from accused Jaipal Singh over Rs.3,90,000/-. It has also been disclosed that Rs.2,35,000/- was financed by Maurya Motor Limited Patliputra, out of which Rs.1,00,000/- had already been repaid while Rs.1,35,000/- still remains due. It has further been narrated that on 10.07.2007, he had contacted with his driver Santosh Mahto, who disclosed that accused persons diverted the route and taken him to Mahadevganj where the wheat was unloaded at the godown of Mukti Sah. They have taken away the truck to Patna and then he was released. It has also been disclosed that I.O. had seized the wheat from the godown of Mukti Sah on 20.09.2007, apprehended him, but after sometime, I.O. released the accused as well as failed to show seizure of wheat.

4. It has been submitted on behalf of petitioner that from plain reading of the complaint petition, it is apparent that truck was under hire purchase and further, petitioner happens to be employee of financer. It has also been submitted that till saturation of the loan amount as per Hire-Purchase Act, the financer happens to be the

owner. From Complaint Petition, it is also apparent that Rs.1,35,000/- was still due. In the aforesaid facts and circumstances of the case, no offence under Section 420 of the I.P.C. is made out and consequent thereupon, the order impugned is illegal.

5. In spite of personal service, opposite party no.2 did not turn up. Learned Additional Public Prosecutor fairly submitted that the truck in question was purchased under Hire-Purchase Agreement, then in that event, criminal prosecution is unwarranted.

6. In ***Rajib Ranjan & Others Vrs. R. Vijay Kumar reported in (2015) 1 SCC 513***, the Hon'ble Apex Court considered the controversy relating to civil cause as well as criminal prosecution and the relevant Paragraph is quoted below hereinafter:-

“23. In State of Haryana v. Bhajan Lal 1992 Supp (1) SCC 335, this Court has laid down principles on which the court can quash the criminal proceedings under Section 482 CrPC. These are as follows: (SCC pp. 378-79, para 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.

(2) Where the allegations 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 the 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 allegations 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 Act concerned (under which a 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 Act concerned, 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 on the accused and with a view to spite him due to private and personal grudge.”

Principles 6 and 7 are clearly applicable in the present case.

24. *Having regard to the circumstances narrated and explained above, we are also of the view that an attempt is made by the respondent to convert a case with civil nature into a criminal prosecution. In a case like this, the High Court would have been justified in quashing the proceedings in exercise of its inherent powers under Section 482 of the Code. It would be of benefit to refer to the judgment in Indian Oil Corpn. v. NEPC India Ltd.(2006) 6 SCC 736, wherein the Court adversely commented upon this very tendency of filing the criminal complaints even in cases relating to commercial transaction for which civil remedy is available or has been availed. The Court held that the following observations of the Court in this behalf are taken note of: (SCC pp. 748-49, paras 13-14)*

“13. While on this issue, it is necessary to take notice of a growing tendency in business circles to convert purely civil disputes into criminal cases. This is obviously on account of a prevalent impression that civil law remedies are time consuming and do not adequately protect the interests of lenders/creditors. Such a tendency is seen in several family disputes also, leading to

irretrievable breakdown of marriages/families. There is also an impression that if a person could somehow be entangled in a criminal prosecution, there is a likelihood of imminent settlement. 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. In *G. Sagar Suri v. State of U.P.* (2000) 2 SCC 636, this Court observed: (SCC p. 643, para 8)

‘8. ... It is to be seen if a matter, which is essentially of a civil nature, has been given a cloak of criminal offence. Criminal proceedings are not a short cut of other remedies available in law. Before issuing process a criminal court has to exercise a great deal of caution. For the accused it is a serious matter. This Court has laid certain principles on the basis of which the High Court is to exercise its jurisdiction under Section 482 of the Code. Jurisdiction under this section has to be exercised to prevent abuse of the process of any court or otherwise to secure the ends of justice.’

14. While no one with a legitimate cause or grievance should be prevented from seeking remedies available in criminal law, a complainant who initiates or persists with a prosecution, being fully aware that the criminal proceedings are unwarranted and his remedy lies only in civil law, should himself be made accountable, at the end of such misconceived criminal proceedings, in accordance with law. One positive step that can be taken by the courts, to curb unnecessary prosecutions and harassment of innocent parties, is to exercise their power under Section 250 CrPC more frequently, where they discern malice or frivolousness or ulterior motives on the part of the complainant. Be that as it may.”

25. In *Inder Mohan Goswami v. State of Uttaranchal* (2007) 12 SCC 1, the Court reiterated the scope and ambit of power of the High Court under Section 482 of the Code in the following words: (SCC pp. 10-11 & 16, paras 23-25 & 46)

“23. This Court in a number of cases has laid down the scope and ambit of courts’ powers under Section 482 CrPC. Every High Court has inherent power to act *ex debito justitiae* to do real and substantial justice, for the administration of which alone it exists, or to prevent abuse of the process of the court. Inherent power under Section 482 CrPC can be exercised:

(i) to give effect to an order under the Code;

- (ii) to prevent abuse of the process of court; and
 (iii) to otherwise secure the ends of justice.

24. Inherent powers under Section 482 CrPC though wide have to be exercised sparingly, carefully and with great caution and only when such exercise is justified by the tests specifically laid down in this section itself. Authority of the court exists for the advancement of justice. If any abuse of the process leading to injustice is brought to the notice of the court, then the court would be justified in preventing injustice by invoking inherent powers in absence of specific provisions in the statute.

Discussion of decided cases

25. Reference to the following cases would reveal that the courts have consistently taken the view that they must use this extraordinary power to prevent injustice and secure the ends of justice. The English courts have also used inherent power to achieve the same objective. It is generally agreed that the Crown Court has inherent power to protect its process from abuse. In *Connelly v. Director of Public Prosecutions* 1964 AC 1254, Lord Devlin stated that where particular criminal proceedings constitute an abuse of process, the court is empowered to refuse to allow the indictment to proceed to trial. Lord Salmon in *Director of Public Prosecutions v. Humphrys* 1977 AC 1 stressed the importance of the inherent power when he observed that it is only if the prosecution amounts to an abuse of the process of the court and is oppressive and vexatious that the Judge has the power to intervene. He further mentioned that the court's power to prevent such abuse is of great constitutional importance and should be jealously preserved.

* * *

46. The court must ensure that criminal prosecution is not used as an instrument of harassment or for seeking private vendetta or with an ulterior motive to pressurise the accused. On analysis of the aforementioned cases, we are of the opinion that it is neither possible nor desirable to lay down an inflexible rule that would govern the exercise of inherent jurisdiction. Inherent jurisdiction of the High Courts under Section 482 CrPC though wide has to be exercised sparingly, carefully and with caution and only when it is justified by the tests specifically laid down in the statute itself and in the aforementioned cases. In view of the settled legal position, the impugned judgment cannot be sustained."

7. From plain reading of the complaint petition, it is apparent that the nature of dispute speaks out and out a civil cause which has purposely been converted into criminal prosecution. Moreover, under Hire-Purchase Agreement, Financer happens to be the owner of the vehicle till saturation of last instalment and on account thereof, status of opposite party no.2 as owner of the vehicle is also found intangibly.

8. Accordingly, the order impugned is set aside relating to the petitioner. Petition is allowed.

(Aditya Kumar Trivedi, J)

Vikash/-

U		T	
---	--	---	--