

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.40327 of 2012

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Ajay Kumar

.... Petitioner/s

Versus

State of Bihar & Anr

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Anant Kumar Bhaskar-Advocate

For the Opposite Party/s : Mr. Ram Naresh Roy (A.P.P.)

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI
ORAL ORDER

04 17-07-2015

Heard learned counsel for the petitioner and learned

Additional Public Prosecutor along with learned counsel for the informant.

2. Petitioner, who joined on 04.04.2010 as Circle Officer of Ram Nagar Block along with two others have been arrayed as an accused at the instance of opposite party no.2/ complainant Suresh Prasad on an allegation that they have conspired and in order to put the complainant under wrongful loss, created forgery in the Jamabandi Register by inserting the name of accused Nathuni Tiwari in his place. Furthermore, on a petition filed under Right to Information Act, it has been informed from the office of the petitioner that there was no basis for inserting the name of accused Nathuni Tiwari in the Jamabandi Register.

3. on the basis of the aforesaid complaint petition, the learned Additional Chief Judicial Magistrate, Bagaha transferred

the same under Section 192(2) of the Cr.P.C. to a Court of Magistrate for holding an enquiry under Section 202 Cr.P.C. who, after concluding the same took cognizance of an offence punishable under Sections 420, 323 of the I.P.C. and accordingly, summoned the petitioner including others.

4. No counter-affidavit has been filed on behalf of opposite party no.2 and that being so, the assertion of the petition made under Paragraph-5 of the pleading that he joined office on 04.04.2010 and Mr. Kumar Binod was his predecessor is found uncontroverted. It is also apparent that neither in the complaint petition nor during course of an enquiry, petitioner has been able to substantiate that after 04.04.2010, the date of joining of petitioner, any sort of interpolation was made in the Jamabandi Register. That being so, the interpolation as alleged by the opposite party no.2/ complainant must have been before 04.04.2010 and for that, petitioner cannot be held responsible.

5. In Amit Kapoor versus Ramesh Chander and another reported in (2012) 9 SCC 460, wherein the case of Bhajan Lal has also been considered along with other relevant judicial pronouncement on this very score, under Paragraph-27, the following criteria have been identified for indulgence as well as exercise of power under 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 :

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.

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.

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.*

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 loathe to interfere, at the threshold, to throttle the prosecution in exercise of its inherent powers.*

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.

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.*

7) *The process of the Court cannot be permitted to be used for an oblique or ultimate/ulterior purpose.*

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.*

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.*

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.*

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.*

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 with by the prosecution.*

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.

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.*

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 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 West Bengal & Ors. v. Swapan Kumar Guha & Ors. [AIR 1982 SC 949]; Madhavrao Jiwaji Rao Scindia & Anr. v. Sambhajirao Chandrojirao Angre & Ors. [AIR 1988 SC 709]; Janata Dal v. H.S. Chowdhary & Ors. [AIR 1993 SC 892]; Mrs. Rupan Deol Bajaj & Anr. v. Kanwar Pal Singh Gill & Ors. [AIR 1996 SC 309]; G. Sagar Suri & Anr. v. State of U.P. & Ors. [AIR 2000 SC 754]; Ajay Mitra v. State of M.P. [AIR 2003 SC 1069]; M/s. Pepsi Foods Ltd. & Anr. v. Special Judicial Magistrate & Ors. [AIR 1988 SC 128]; State of U.P. v. O.P. Sharma [(1996) 7 SCC 705]; Ganesh Narayan Hegde v. s. Bangarappa & Ors. [(1995) 4 SCC



41]; *Zundu Pharmaceutical Works Ltd. v. Mohd. Sharaful Haque & Ors.* [AIR 2005 SC 9]; *M/s. Medchl Chemicals & Pharma (P) Ltd. v. M/s. Biological E. Ltd. & Ors.* [AIR 2000 SC 1869]; *Shakson Belthissor v. State of Kerala & Anr.* [(2009) 14 SCC 466]; *V.V.S. Rama Sharma & Ors. v. State of U.P. & Ors.* [(2009) 7 SCC 234]; *Chunduru Siva Ram Krishna & Anr. v. Peddi Ravindra Babu & Anr.* [(2009) 11 SCC 203]; *Sheo Nandan Paswan v. State of Bihar & Ors.* [AIR 1987 SC 877]; *State of Bihar & Anr. v. P.P. Sharma & Anr.* [AIR 1991 SC 1260]; *Lalmuni Devi (Smt.) v. State of Bihar & Ors.* [(2001) 2 SCC 17]; *M. Krishnan v. Vijay Singh & Anr.* [(2001) 8 SCC 645]; *Savita v. State of Rajasthan* [(2005) 12 SCC 338]; and *S.M. Datta v. State of Gujarat & Anr.* [(2001) 7 SCC 659]].

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 to the requirements of the offence.

6. Now, taking into account the factual uncontroverted aspect as indicated above, instant proceeding so far petitioner is concerned, is found misconceived and on account thereof, the order of cognizance dated 06.10.2010 passed by the learned lower Court in connection with Complaint Case No.755 of 2010, Suresh Prasad v. Nathuni Tiwari is hereby quashed to the extent of petitioner only. Petition is allowed.

Vikash/-

(Aditya Kumar Trivedi, J)

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