

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.2035 of 2012

Arising Out of PS.Case No. -51 Year- 2007 Thana -null District- NALANDA (BIHARSHARIFF)

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1. Shanti Devi @ Shanti Niketan Sinha, W/O Sri Krishna Prasad Singh.
 2. Sri Krishna Prasad Singh, S/O Late Ram Keshwar Prasad Singh.
 3. Basant Kumar Singh.
 4. Santosh Kumar Singhm Both sons of Sri Krishna Prasad Singh. All residents of Vill- Gaurav Nagar, P.S- Parwalpur, Distt- Nalanda.

.... Petitioners

Versus

1. The State Of Bihar
2. Ram Krishna Prasad Singh, S/O Late Ram Keshwar Prasad Singh, R/O Vill- Gourav Nagar, P.S Parwalpur, Distt-Nalanda.

.... Opposite Parties

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Appearance :

For the Petitioners	:	Mr. Rajendra Kishore Prasad, Advocate, Mr. Abhishek Kumar Mishra, Advocate, Mrs. Rekha Kumari, Advocate, Mr. Pramod Kumar, Advocate and Mr. Ritesh Kumar, Advocate.
For the State	:	Mr. C. Jawahar, APP.
For Opposite Party No.2	:	None.

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CORAM: HONOURABLE MR. JUSTICE SUDHIR SINGH

ORAL JUDGMENT

Date: 19-05-2017

No one appears on behalf of the opposite party No.2.

2. Heard learned counsel for the petitioners and learned

A.P.P. for the State.

3. In the present application, the petitioners have sought quashing of the order dated 26.11.2011, passed by Sri S.K. Roy, Judicial Magistrate, 1st Class, Hilsa, in Ekangar Sarai P.S. Case No.51 of 2007, whereby the discharge petition of the petitioners has been rejected taking into account that there is sufficient material to show



that the offences under Sections 448, 380 and 504/34 I.P.C. is made out.

4. The prosecution case, in short, is that on 27.02.2007 at about 5 P.M. the complainant was getting plaster of his house done through his labour, the accused persons variously armed with weapons entered inside his house and took away wood pieces of Sakhua worth Rs.8000/- and accused Sri Krishna Prasad Singh, Santosh Kumar Singh and Basant Kumar Singh while running away, took away a box containing ornaments and cash. The complainant received telephonic information from one Pappu Kumar about the incident.

5. It has been submitted on behalf of the petitioners that prior to institution of the present case, a case was instituted by the petitioners vide Annexure-3 to the present application. Hence, the opposite party No.2 having an intention of false implication and in retaliation to the case instituted by the petitioners, has got the present case instituted against the petitioners. There is an admitted land dispute between the parties and for that civil litigations are already pending between the parties. As per the prosecution case, one Pappu Kumar is said to have informed the informant regarding the incident, which took place in the house of the informant, but in course of investigation, he has not supported the prosecution case, rather he has



made a specific denial regarding any such information being given to the informant. It is a malafide prosecution as well as abuse of process of the Court.

6. On behalf of the State, it has been submitted that a complaint case was filed, which was subsequently sent to the concerned Police Station under Section 156(3) Cr.P.C. for institution of the F.I.R. The police after investigation had submitted a charge sheet against the accused persons under Sections 323, 341 and 504/34 of the Indian Penal Code. The allegations made in the F.I.R., were found to be true and considering the same, the petitioners have been sent up for trial, thereafter, the learned A.C.J.M., Hilsa, took cognizance in the above mentioned Sections of the Indian Penal Code.

7. On behalf of the State, it is further submitted that from perusal of the case diary, it would be evident that the witnesses examined in paras 6, 7 and 8 of the case diary have supported the prosecution case and the court below considering the materials available on record has rightly rejected the discharge petition made on behalf of the petitioners. There is no illegality in the order of the court below.

8. It would be relevant to point out here that this application has been filed under Section 482 of Code of Criminal Procedure 1973, which envisages three circumstances in which



inherent powers can be exercised.

- (i) to give effect to any order passed or made
under the Code;
- (ii) to prevent abuse of the process of any Court;
and
- (iii) to secure the ends of justice.

Thus the inherent jurisdiction of this Court can be exercised to quash criminal proceedings in an appropriate case either to prevent abuse of process of any Court or otherwise to secure the ends of justice. Ordinarily, Criminal proceedings instituted against an accused person, must be tried under the provisions of the Code, and this Court should be reluctant to interfere with the said proceedings at an interlocutory stage.

9. It is worth quoting, the observations of PANDIAN, J. in State of Haryana Vs Bhajanlal, which lay down the limitations of inherent power of this Court, saved under Section 482 of the Code of Criminal Procedure.

“The Power of Quashing a Criminal proceeding should be exercised very sparingly and with circumspection and that too in the rarest of rare cases; that the Court will not be justified in embarking upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the F.I.R. or the Complaint and that the extraordinary or inherent



powers do not confer any arbitrary jurisdiction on the Court to act according to it's whim or Caprice.”

10. In my view, inherent powers are in the nature of extraordinary powers to be used sparingly for achieving the object mentioned in Section 482 of the Code, in cases where there is no express provision empowering this Court to achieve the said object. The power is discretionary and should be exercised for *ex debito justitiae*. Purpose behind saving of inherent power is that no legislature can foresee all possible contingencies or eventualities that may arise in future and to meet with such situations, inherent power can be invoked by this Court.

11. While exercising jurisdiction under Section 482, this Court should not assume the role of a trial court and embark upon an enquiry as to the reliability of evidence and sustainability of accusation on a reasonable appreciation of such evidence.

12. In the present case, there are such allegations, which constitute the offences and during investigation, sufficient materials were found in support of the allegation, therefore, charge sheet was submitted and the learned Jurisdictional Magistrate took cognizance for the offences under Sections 323, 341 and 504 r/w 34 of the Indian Penal Code.

In my view, at the stage of framing charge, the court is



expected to consider only the prima facie case to proceed against the accused and not whether the case would result in conviction.

13. In the case of State of Maharashtra vs. Salman Khan AIR 2004 SC 1189, the Supreme Court of India held that truthfulness, sufficiency, adequacy or acceptability of the material produced at the time of framing of charges can be considered only at the trial and not at a prior stage.

14. Considering the aforesaid facts and circumstances, I find no merit in the application. The interim stay granted to the petitioners vide order dated 10.04.2012 stands vacated.

15. Accordingly, this application is dismissed. The court below is directed to proceed with the case.

(Sudhir Singh, J)

Narendra/-

AFR/NAFR	N.A.F.R.
CAV DATE	N.A.
Uploading Date	30.05.2017
Transmission Date	

