

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.49673 of 2013

Arising Out of PS.Case No. -279 Year- 2013 Thana -ROHTAS COMPLAINT CASE District-
SASARAM (ROHTAS)

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Samrendra Kumar S/O Late Mahendra Singh R/O Village- Lalganj, P.O-
Sasaram, P.S & District- Sasaram.

.... Petitioner/s

Versus

1. The State Of Bihar
2. Kaushal Kishore Pandey S/O Late Sitaram Pandey R/O Mohalla-
Fazalganj, Ward No. 11, P.O, P.S & District- Sasaram.

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Raghunandan Kumar Singh, Advocate
Mr. Upadhyay Saurabh Kumar, Advocate

For opposite party no.2 : Mr. Ajay Nandan Sahay, Advocate
Mr. Ravi Shankar Sahay, Advocate

For the Opposite Party/s : Mr. Ashok Kumar-I(APP)

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CORAM: HONOURABLE JUSTICE SMT. NILU AGRAWAL

CAV JUDGMENT

Date: 25-05-2017

Heard learned counsel for the petitioner, learned
counsel for the opposite party no.2 and learned counsel
appearing on behalf of the State.

2. The present application under Section 482 of the
Code of Criminal Procedure (hereinafter referred to as the
Code) has been filed for quashing of the order dated 25.07.2013
passed by the learned Judicial Magistrate 1st Class, Sasaram
whereby after taking cognizance against the petitioner and other
accused under Sections 420 and 504/34 of the Indian Penal
Code, processes have been issued in connection with Complaint



Case No. 279 (c) of 2013/ Trial No. 2124 of 2013.

3. The prosecution case, in brief, is that on 14.9.2012 at about 12 0' clock all the accused persons came on the table of the complainant. Among them Vijay Kumar Gupta, an agent of sale and purchase of land, had asked the complainant to purchase the land of Samrendra Kumar, who has a piece of land, which is undisputed. He had further shown the photo copy of deed and revenue rent receipt of land, which was in the name of Samrendra Kumar and Radhika Devi. Thereafter all the accused persons induced him to purchase the land. The Complainant was also in need of a piece of land, thus he became ready to purchase the land at a price of Rs.15,34,500/-. It was decided that the complainant shall get the land registered within six months. At the same time, the complainant had paid Rs.4,11,000/- cash as advance against that land to Samrendra Kumar (petitioner). A deed of agreement for sale was executed between complainant and Samrendra Kumar. It is further alleged that complainant had also requested to call Radhika Devi to make signature upon that deed. Samrendra Kumar assured him that she will make signature at a later stage. On 12.12.2012 Samrendra and Vijay again came to the table of the complainant and requested to provide Rs.1,40,000/-. The



Complainant had again paid the said amount. Thereafter the complainant had requested Samrendra to transfer the land in his name after receiving due amount. But six months passed. Unable to get the land registered the, complainant sent a legal notice. On 22.3.2013 while the complainant was coming to the court along with witness No.5, he was intercepted by all the accused persons. They abused and threatened in the light of legal notice. The accused persons stated that they will neither transfer the land nor return the money to the complainant. Hence, the complaint case was filed.

4. Learned counsel for the petitioner submits that the prosecution is a mala fide one, which is an abuse of process of the court. He submits that the matter being purely a civil dispute hence, colour of criminality for prosecution against the petitioner is unfounded and malicious. He further submits that the Mahadanama on a 50 rupees stamp paper is not an authentic document and the provisions of Section 17 of the Registration Act, 1908 (hereinafter referred to as the Act) has not been complied with as for an amount of Rs. 5,51,000/-, which was given by way of advance and Mahadanama was prepared, stamp paper equivalent value of court fee had to be taken and registered, as sub-section 1(e) of Section 17 of the Act



envisages registration of value of 100 rupees and more to be registered. He further brings to the notice of this Court Section 123 of the Transfer of Property Act to further elaborate the said proposition.

5. On the other hand, learned counsel appearing on behalf of the complainant submits that the petitioner was the main person, who had taken an advance from the complainant in lieu of transferring a plot of land jointly in his name and in the name of one Radhika Devi. He submits that Section 17 of the Act is applicable only upon final transaction when right, title and interest are transferred, but the Mahadanama was only a document showing advance payment. He further submits that Annexure-2 which the petitioner has enclosed showing payment of Rs. 5,51,000/- by the petitioner to the complainant, the signature of complainant has not been found to be authentic by this Court on plain reading as was observed by a co-ordinate Bench of this Court in Cr. Misc. No. 49211 of 2014 dated 30.04.2015 while rejecting the anticipatory bail application of the petitioner. It is further submitted that two of the other accused, namely, Mahendra Singh and Vijay Kumar Gupta had moved this Court for quashing of the order of cognizance dated 25.07.2013 passed in the present case, bearing Cr. Misc. No.



45353 of 2013, which was dismissed by a co-ordinate Bench of this Court by order dated 12.01.2017. Hence, it has been submitted that from bare perusal of the complaint case, a prima facie case is made out against the petitioner for offence under Sections 420 and 504/34 I.P.C.

6. Learned counsel appearing on behalf of the State also adopts the argument advanced on behalf of opposite party no.2 and submits that specific accusations have been made against the petitioner regarding the commission of the alleged offence.

7. This application has been filed under Section 482 of the Code, 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.

8. It is, however, not possible or expedient to lay down any inflexible Rule which would govern the exercise of this inherent jurisdiction but by way of illustrations, some categories of cases, may be indicated, where the inherent jurisdiction can and should be exercised for quashing the criminal proceedings:

(1) Where the allegations made in the F.I.R. 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 F.I.R and other materials, if any, accompanying the F.I.R. 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 F.I.R. or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out case against the accused.

(4) Where the allegations in the F.I.R. 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 F.I.R. or complaint are so absurd and inherently improbable on the basis of which no prudent man 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 concerned Act (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 concerned Act, providing efficacious redress for the grievances of the aggrieved party.

(7) Where a criminal proceeding is manifestly accompanied with malafides and/or where the proceeding is maliciously instituted with an ulterior motive of wreaking vengeance on the accused and with a view to spite him due to personal and private grudge.

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.



“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. Considering the aforesaid facts and circumstances, I find no merit in the application filed in connection with Complaint case No.279(c) of 2013/Trial No.2124 of 2013 pending in the court of Judicial Magistrate, 1st class, Sasaram. Accordingly, the present application is dismissed.

13. The petitioner shall be at liberty to take the aforesaid grounds at the time of framing of charge.

(Nilu Agrawal, J.)

Arjun/-

AFR/NAFR	AFR
CAV DATE	23.05.2017
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