

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.45366 of 2013

Arising Out of PS.Case No. -477 Year- 2010 Thana -null District- MADHUBANI

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1. Uday Kant Mishra S/O Laxmikant Mishra, Resident Of Mohalla- Hanuman Nagar, Ward No. 20, P.S & District- Madhubani.

.... Petitioner/s

Versus

1. The State Of Bihar
2. Ashok Kumar Panjiar S/O Late Satya Narain Panjiar, Resident Of Mohalla- Maharajganj, Ward No. 13, P.S- & District- Madhubani.

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Ashok Kumar Mishra, Advocate
For the Opposite Party/s : Mr. Shantanu Kumar, APP

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CORAM: HONOURABLE MR. JUSTICE SUDHIR SINGH

ORAL JUDGMENT

Date: 12-01-2017

Heard learned counsel for the petitioner and learned APP
for the State.

2. The present application has been filed for quashing of
the order dated 14.12.2010 passed by the learned Chief Judicial
Magistrate, Madhubani, whereby after taking cognizance process has
been issued against the petitioner for offences under Section 420
I.P.C. and Section 138 of the Negotiable Instrument Act in connection
with Trial No.521 of 2011 arising out of Complaint Case bearing C.R.
No.477 of 2010.

3. The prosecution case, in brief, is that the petitioner is
working as Contractor and the complainant is said to have given



Rs.10 lacs to the petitioner up to October, 2008 through cheques and the said cheque produced by the complainant in S.B.I. but same was dishonoured on account of insufficient fund in the account. Then the complainant sent legal notice to the petitioner but of no avail. As such, the complainant suspected that the petitioner had played game to usurp the said amount.

4. It has been submitted on behalf of the petitioner that it is a malafide prosecution which has been brought against the petitioner with ulterior motive.

5. No one appears on behalf of the opposite party No.2. On behalf of the State, it has been submitted that from bare perusal of the complaint case it is evident that a prima facie case is made out against the petitioner for an offence under Section 420 I.P.C. and Section 138 of the Negotiable Instrument Act.

6. This application has been filed under Section 482 of the 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.

7. It is, however, not possible or expedient to lay down any inflexible Rule returnable date is extended by another three weeks. 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.

8. 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.”

9. 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.

10. While exercising jurisdiction under Section 482, this High 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.

11. Considering the aforesaid facts and circumstances, I



find no merit in the application. Accordingly, the present application is dismissed.

12. Any how the petitioner will be at liberty to raise all his points at the time of framing of charge.

(Sudhir Singh, J)

Narendra/-

AFR/NAFR	NAFR
CAV DATE	N.A.
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