

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.45456 of 2013

Arising Out of PS.Case No. -null Year- null Thana -null District- KISANGANJ

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Mahendra Prasad Harijan, Son of Late Jhingilal Harijan (Chaukidar of Dighalbank Police Station) resident of - Pipra, Police Station-Dighalbank, District- Kishanganj.

.... Petitioner

Versus

1. The State of Bihar.
2. Rabia Begum, Wife of Ide Mohammad, resident of New Market Tulsia, P.O.- Tulsia, Police Station- Dighalbank, District- Kishanganj.

.... Opposite Parties

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Appearance :

For the Petitioner : Mr. Dilip Kumar Singh, Advocate.
For the State : Mr.Dasrath Mehta, A.P.P.

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CORAM: HONOURABLE MR. JUSTICE SUDHIR SINGH

ORAL JUDGMENT

Date: 12-01-2017

Heard learned counsel for the petitioner and the learned
counsel appearing on behalf of the State.

2. The present application has been filed for quashing of the order dated 06.05.2009 passed by the learned Judicial Magistrate, 1st Class, Kishanganj in connection with Complaint Case No. C.232 of 2007, whereby after taking cognizance, process has been issued for an offence under Sections 147, 385, 354, 323 and 379 of the Indian Penal Code.

3. The prosecution case, in brief, is that the accused persons came at her Flour Mill and started demanding money from the cousin brother of Pradeep Kumar Sinha stating that they had an order from the government to eradicate the Saw Mill of Pradeep Kumar Sinha and started opening the machinery parts of the said



Mill and on being protest by the complainant, they assaulted and abused him in filthy language. She further alleged that accused Satendra Paswan also took money from the complainant.

4. It has been submitted on behalf of the petitioner that the present case is a malafide prosecution which has been brought against the petitioner for ulterior motive. The case of the petitioner is falsified from the perusal of Annexure-2, which has been issued by the District Magistrate. It is a case and counter case between the parties.

5. On behalf of the State, it has been submitted that from bare perusal of the Complaint case itself it is apparent that prima facie case under Sections 147, 385, 354, 323 and 379 of the Indian Penal Code is made out against the petitioner. Specific accusations have been made against the petitioner.

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, 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 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. The interim stay granted to the petitioner vide order dated 12.11.2013 stands vacated.

12. Accordingly, the application stands dismissed in connection with Complaint Case No. C.232 of 2007, pending in the Court of learned Sub Divisional Judicial Magistrate Kishanganj.

13. The petitioner is at liberty to raise his points at the time of framing of the charge.

(Sudhir Singh, J.)

Amit/-

AFR/NAFR	NAFR
CAV DATE	NA
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