

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.44840 of 2013

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

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1. Anil Singh @ Anil Kumar Singh S/O Late Manoj Singh, Resident Of Village-
Shahpur, P.S.- Muffasil, District- Begusarai

.... Petitioner/s

Versus

1. The State Of Bihar
2. The then Block Education Officer, Begusarai, District- Begusarai

.... Opposite Party/s

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Appearance :
For the Petitioner/s : Mr. Rajkumar Singh, Advocate
For the Opposite Party/s : Mr. Umeshanand Pandit, 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 6.12.2012 passed by the Chief Judicial Magistrate,
Begusarai, whereby cognizance has been taken for offences under
Section 409 I.P.C. in connection with Begusarai Mufasil P.S. case
No.151 of 2012 and bearing G.R. No.1596/12.

3. The prosecution case, in brief, is that the petitioner had
illegally taken custody of government documents with an intention to
disfigure the same and to disturb the departmental work.

4. It has been submitted on behalf of the petitioner no
offence under Section 409 I.P.C. is made out. As per the prosecution



case, there was a direction upon the petitioner to hand over the charge in which the petitioner had failed. Hence, this prosecution has been brought against him. It is at best a case of disobedience on the part of the petitioner. No criminal offence is made out against him.

5. On behalf of the State, it has been submitted that from bare perusal of the F.I.R., it is evident that all the ingredients for offence under Section 409 I.P.C. are made out. As the petitioner being a public servant was entrusted with the property for which he was duty bound to account but the accused has misappropriated the same. When the entrustment is proved giving a false account of its use in generally to be a strong circumstance against the accused.

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 its 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 24.10.2013 stands vacated in connection with Begusarai Mufassil P.S. case No.151 of 2012 pending in the



court of Sri Rajeev Kumar IV, Judicial Magistrate, 1st class, Begusarai

Accordingly, the present application is dismissed.

12. The petitioner is at liberty to raise all his points at the stage of framing of charge.

(Sudhir Singh, J)

Narendra/-

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	02.02.2017
Transmission Date	02.02.2017

