

**IN THE HIGH COURT OF JUDICATURE AT PATNA**

**Criminal Miscellaneous No.45325 of 2013**

Arising Out of PS.Case No. -null Year- null Thana -null District- VAISHALI(HAJIPUR)

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1. Akhtar Hussain S/O Late Mustafa Kamal Resident Of Village Sahpur Ubdi, P.S- Sahpur Patori, Distt- Samastipur.
  2. Khurshid Anwar S/O Late Mustafa Kamal Resident Of Village Sahpur Ubdi, P.S- Sahpur Patori, Distt- Samastipur.
  3. Jangir Alam Khan @ Jahangir Khan S/O Khurshid Anwar Resident Of Village Sahpur Ubdi, P.S- Sahpur Patori, Distt- Samastipur.
  4. Shamsher Alam Khan S/O Late Akbal Khan Resident Of Village Sahpur Ubdi, P.S- Sahpur Patori, Distt- Samastipur.
  5. Nasim Khan S/O Habibulla Khan Resident Of Village Sahpur Ubdi, P.S- Sahpur Patori, Distt- Samastipur.

.... .... Petitioners

Versus

1. The State Of Bihar
2. Ajaz Ahmad S/O Arif Hussain Resident Of Village- Mircha Ram, P.S- Sarai, District- Vaishali.

.... .... Opposite Party

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**Appearance :**

For the Petitioner/s : Mr. Alok Kumar Sinha-I  
For the Opposite Party/s : Mr. Anil Kumar Singh

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**CORAM: HONOURABLE MR. JUSTICE SUDHIR SINGH**

**ORAL JUDGMENT**

**Date: 12-01-2017**

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

2. The present application has been filed for quashing of the order dated 13.05.2013 passed by the learned Judicial Magistrate, 1<sup>st</sup> Class, Hajipur (Vaishali) in connection with Complaint Case No. 2424 of 2012/Tr. 5562 of 2012/Tr. No. 5196 of 2013, whereby after taking cognizance, process has been issued for an offence under Sections 323 and 506 of the Indian Penal Code.

3. The prosecution case, in brief, is that the accused persons came at the residence of the complainant on two motorcycles, and after abusing him assaulted by fist and slaps and



threatened him to kill.

4. It has been submitted on behalf of the petitioners that the present case is a malafide prosecution for settling the matrimonial dispute. From bare perusal of the complaint case, it is evident that no prima facie case is made out against the petitioners. The matter relates to family dispute. It is further submitted that no criminal offence is made out against the petitioners. It is a case of breach of trust. Hence no criminal offence is made out.

5. On behalf of the State and the counsel for the Opposite Party No.2, it has been submitted that from bare perusal of the Complaint case, prima facie case under Sections 323 and 506 of the Indian Penal Code is made out against the petitioners. Specific accusations have been made against the petitioners and in the course of inquiry the complainant, as also, the witnesses have supported the same.

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 petitioners vide order dated 28.10.2013 stands vacated.

12. Accordingly, the application stands dismissed in connection with Complaint Case No. 2424 of 2012/Tr. No. 5196 of 2013, pending in the court of learned Judicial Magistrate 1<sup>st</sup> Class, Hajipur, Vaishali.

13. The petitioners are at liberty to raise all their points at the stage of framing of the charge.

**(Sudhir Singh, J.)**

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