

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.45435 of 2013

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

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Vijay Kumar Sah, S/O Muneshwar Sah, resident of Village- Dumri, P.S- National Highway (Bangra), District- Samastipur.

.... Petitioner

Versus

1. The State of Bihar.
2. The Assistant Electrical Engineer, Electric Supply Sub- Division, Pusa, P.O And P.S- Pusa, District- Samastipur.

.... Opposite Parties

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Appearance :

For the Petitioner : M/s. Prashant Vedasen and Subhash Chandra Bose, Advocates.
For the State : Ms. Veena Kumari, A.P.P.
For the Electricity Board : Mrs. Namrata Mishra, Advocate.

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CORAM: HONOURABLE MR. JUSTICE SUDHIR SINGH

ORAL JUDGMENT

Date: 12-01-2017

Heard learned counsels for the petitioner, State and the learned counsel appearing on behalf of the Electricity Board.

2. The present application has been filed for quashing of the order dated 04.03.2013, passed by learned Chief Judicial Magistrate, Samastipur, in connection with Tr. No. 2209 of 2013/ National Highway P.S. Case No. 11 of 2012, whereby after taking cognizance, process has been issued for an offence under Section 135 of the Electricity Act, 2003.

3. The prosecution case, in brief, is that the when the



informant along with other staffs of Electric Supply Sub-Division, Pusa proceeded to the Industrial premises of the petitioner to install Electric Meter for his eight horse power meter as agreed but the petitioner was found using electricity illegally by using P.V.C. wire from the main electric line of Bihar State Electricity Board.

4. It has been submitted on behalf of the petitioner that the present case is a malafide prosecution. There is no compliance of Section 126 of the Electricity Act. Learned counsel for the petitioner further relies upon Annexure-4 of the petition, which has been issued by the Electrical Superintending Engineer, Samastipur.

5. On behalf of the counsels for the Opposite Party No.2 and the State, it has been submitted that from bare perusal of the F.I.R., it is evident that prima facie offence under Section 135 of the Electricity Act is made out against the petitioner. There is specific accusation made in the F.I.R. for committing theft of electricity by 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, the High Court should not assume the role of a trial court and embark upon an enquiry and investigation 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 application stands dismissed. The interim stay granted to the petitioner vide order dated 25.10.2013, stands vacated.

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

(Sudhir Singh, J.)

Amit/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	03.02.2017.
Transmission Date	03.02.2017.

