

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.44804 of 2013

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

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Ravi Dyal Shah, S/O Ramashray Shah, resident of Village- Dharampur, P.S.- Samastipur (Muffasil), District- Samastipur.

2. Surendra Sah, Son of Subelal Sah, resident of Village- Champapur Agrail, P.S.- Baligaon, District- Vaishali.

.... Petitioners

Versus

1. The State of Bihar.

2. Shivnath Rai @ Vimal Rai, S/O Ram Chandra Rai, resident of Village- Dharampur, P.S.- Samastipur (Muffasil), District- Samastipur.

.... Opposite Parties

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Appearance :

For the Petitioners : Mr. Amitabh Bhardwaj, Advocate.

For the State : Mr. Amitesh Kumar, A.P.P.

For the Complainant : Mr. R.S.K. Singh, Advocate.

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CORAM: HONOURABLE MR. JUSTICE SUDHIR SINGH

ORAL JUDGMENT

Date: 11-01-2017

Heard learned counsels for the petitioner, complainant and learned counsel for the State.

2. The present application has been filed by the petitioners for quashing the order dated 13.09.2013, passed by learned J.M. Ist Class, Samastipur, in connection with Complaint Case No. 231/2013 whereby after taking cognizance under Sections 364 and 120(B) of the I.P.C., the process has been issued against the petitioners.

3. The prosecution case, in brief, is that on the alleged date and time of occurrence, the son of the informant, namely, Amit Kumar, went with the petitioners but he did not return. The informant



started search him. Some people told the informant that on 26.04.2011 at about 9.00 A.M., his son was seen in the company of accused persons. The informant went at the house of petitioner no. 1, where he was informed that his son went to Delhi with the petitioners for doing some job. The informant insisted to talk with his son but the petitioners did not make such arrangements. On 01.08.2011, when the petitioners returned back and his son did not return back than the informant enquired from the petitioners but they told him that his son has gone somewhere. The informant apprehended that the petitioners might have killed his son. It is further alleged that there was some monetary dispute between the petitioners and his son, Amit Kumar.

4. It has been submitted on behalf of learned counsel for the petitioners that it is a malafide prosecution. There is no substantive evidence to suggest their implication in the present case. Prior to institution of the present complaint case, a police case was also instituted where the final form was submitted by the police. Learned court below has no jurisdiction to proceed with the complaint case as death of the victim has taken place at Delhi.

5. It has been submitted on behalf of learned counsels for the complainant and the State that prima-facie the offence is made out under Sections 364 and 120(B) of the I.P.C., against the petitioners.

6. The victim was abducted within the jurisdiction of this



Court. Hence, the question of jurisdiction does not arise in the present case.

7. 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.

8. 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.

9. 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.”

10. 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.



11. 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.

12. Considering the aforesaid facts and circumstances, I find no merit in the present case. The same is dismissed.

13. The interim stay granted to the petitioners vide order dated 24.10.2013, stands vacated.

U.K./-

(Sudhir Singh, J)

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	02.02.2017.
Transmission Date	

