

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.45353 of 2013

Arising Out of PS.Case No. -279 Year- 2013 Thana -null District- SASARAM (ROHTAS)

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1. Mahendra Singh S/O Late Ram Bahadur Singh, R/O Village- Lalganj, P.O- Sasaram, P.S & District- Sasaram.
 2. Vijay Kumar Gupta S/O Late Pyrelal Gupta, Resident Of Muhalla- Kansarai Adda Road, P.O & P.S & District- Sasaram

.... Petitioner/s

Versus

1. The State Of Bihar
2. Kaushal Kishore Pandey S/O Late Sitaram Pandey, R/O Muhallah Fazalganj, Ward No. 11, P.O, P.S & District- Sasaram.

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Neeraj Kumar Singh, Advocate
For the State/s : Mr. Ahmad Ali, APP
For Opposite Party No.2 : Mr. Ravi Shankar Sahay, Advocate
Mr. Sanjay Kumar Tiwary, Advocate
Mr. Ajay Nandan Sahay, Advocate

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CORAM: HONOURABLE MR. JUSTICE SUDHIR SINGH

ORAL JUDGMENT

Date: 12-01-2017

Heard learned counsel for the petitioners, learned APP for the State and learned counsel for the opposite party No.2.

2. The present application has been filed for quashing of the order dated 25.7.2013 passed by the learned Judicial Magistrate, 1st class, Sasaram, whereby after taking cognizance process has been issued against the petitioners for offences under Sections 420 and 504/34 I.P.C. in connection with Complaint case No.279(c) of 2013.

3. The prosecution case, in brief, is that on 14.9.2012 at about 12 0' clock all the accused persons came on the table of the complainant. Among them Vijay Kumar Gupta, an agent of sale and purchase of land, had asked the informant to purchase the land of Samrendra Kumar, who has a piece of land, which is undisputed. He



had further shown the photo copy of deed and revenue rent receipt of land, which was in the name of Samrendra Kumar and Radhika Devi. Thereafter all the accused persons induced him to purchase the land. The Complainant was also in need of a piece of land, thus he became ready to purchase that land and at the price of Rs.15,34,500/-. It was decided that the complainant shall get the land registered within six months. At the same time, the complainant had paid Rs.4,11,000/- cash as advance against that land to Samrendra Kumar. Thereafter a deed of agreement for sale was executed between complainant and Samrendra Kumar. It is further alleged that complainant had also requested to call Radhika Devi to make signature upon that deed. Then Samrendra Kumar assured him that she will make signature at later stage. On 12.12.2012 Samrendra and Vijay again came to the table of the informant and requested to provide Rs.1,40,000/-. The Complainant had again paid the said amount for which they made entry upon the deed of agreement. Thereafter the complainant had requested to Samrendra to transfer the land in his name after receiving due amount. On 22.3.2013 while the complainant was coming to the court along with witness No.5, he was intercepted by all the accused persons. They abused and threatened in the light of legal notice. The accused persons stated that they neither transfer the land nor return the money to the complainant.

4. It has been submitted on behalf of the petitioners that it is malafide prosecution and it is an abuse of process of the court. It is



purely a civil dispute between the parties and regarding the same a suit is pending in the court below for specific performance of contract numbered as Case No.264 of 2013 pending before the Sub Judge 1st, Sasaram at Rohtas.

5. On behalf of the State and the learned counsel for the opposite party No.2, it has been submitted that from bare perusal of the complaint case a prima facie case is made out against the petitioners for offence under Sections 420 and 504/34 I.P.C. Specific accusations have been made against the petitioners regarding the commission of the alleged offence.

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 29.10.2013 stands vacated in connection with Complaint case No.279(c) of 2013/Trial No.2124 of 2013 pending in the court of Judicial Magistrate, 1st class, Sasaram. Accordingly, the present application is dismissed.

12. The petitioners shall be at liberty to take the aforesaid grounds at the time of framing of charge.

(Sudhir Singh, J)

Narendra/-

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	03.02.2017
Transmission Date	03.02.2017

