

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.45097 of 2013

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

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1. Babita Kumari Daughter of Ramanand Thakur Resident Of Mohalla-
Brahmpura, Police Station- Brahmpura, District- Muzaffarpur.

.... Petitioner

Versus

1. The State Of Bihar.
2. Sunita Kumari Daughter Of Yadunath Pandey Resident Of Mohalla - Rasulpur
Jillani (Renter- House Of Bhubneshwar Chaudhary), Police Station- Kaji
Mohammadpur, District- Muzaffarpur.

.... Opposite Party

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Appearance :

For the Petitioner/s : Mr. Upendra Kumar Chaube

For the Opposite Party/s : Mr. Ram Bachan Singh

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CORAM: HONOURABLE MR. JUSTICE SUDHIR SINGH

ORAL JUDGMENT

Date: 11-01-2017

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

2. The present application has been filed by the petitioner
for quashing of the order dated 01.03.2013, passed by learned Chief
Judicial Magistrate, Muzaffarpur, whereby after taking cognizance,
process has been issued in connection with Kazi Mahmadpur P.S.
Case No. 128 of 2004, bearing Tr. No. 4008 of 2013, for the offences
under Sections 302, 120B/34 of the Indian Penal Code and Section
27 of the Arms Act.

3. The allegation against the petitioner is that she along
with co-accused namely Ramesh Thakur came on a motorcycle and
both of them took out pistol and fired, which hit the father of the
informant, due to which, he died. It is further stated that since she had



seen the occurrence, thus became nervous and for that reason, there has been some delay in informing the police.

4. It has been submitted on behalf of the petitioner that after investigation, the police has submitted final form and thereafter the learned court below has taken cognizance after differing from the final form submitted by the police. There are major contradictions in the statements of the prosecution witnesses. It is further submitted that it is a case of no evidence.

5. On behalf of the State and the Opposite Party No.2, it has been submitted that the petitioner is named in the F.I.R. From bare perusal of the case diary also, it is evident that there is sufficient material against the petitioner. The learned court below has rightly differed with the final form submitted by the police and taken cognizance for the offence under Sections 302, 201/34 of the Indian Penal Code and Section 27 of the Arms Act.

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. In the present case the learned Magistrate has differed with the opinion of the police. In my view, notwithstanding the



opinion of the police, a magistrate is empowered to take cognizance if the material on record makes out a case for the said purpose. The investigation is the exclusive domain of the police. The taking of cognizance of the offence is an area exclusively within the domain of a magistrate. At this stage, the magistrate has to be satisfied whether there is sufficient ground for proceeding and not whether there is sufficient ground for conviction.

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 application. The interim stay granted to the petitioner vide order dated 28.10.2013 stands vacated.

13. Accordingly, the present application is dismissed in connection with Kazi Mahmadpur P.S. Case No. 128 of 2004, Tr. No. 4008 of 2013, pending in the Court of learned Chief Judicial Magistrate, Muzaffarpur.

(Sudhir Singh, J.)

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