

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.205 of 2016

Arising Out of PS. Case No. -1435 Year- 2012 Thana -PATNA COMPLAINT CASE District- PATNA

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1. ANUJ KUMAR S/O LATE GANAURI SAO, R/O MOHALLA- SIMLI NABABGANJ, P.S.- MALSALAMI, DISTRICT- PATNA.
 2. SONU KUMAR.
 3. MONU KUMAR, BOTH S/O ANUJ KUMAR, R/O MOHALLA- SIMLI NABABGANJ, P.S.- MALSALAMI, DISTRICT- PATNA.

.... PETITIONER/S

VERSUS

1. THE STATE OF BIHAR.
2. VIKAS KUMAR S/O LATE UPENDAR SAO, R/O MOHALLA- SIMLI NABABGANJ, P.S.- MALSALAMI, DISTRICT- PATNA. PRESENTLY RESIDENT OF SUBHASH NAGAR, KHEMENICHAK, P.S. RAM KRISHNA NAGAR, DISTRICT- PATNA.

.... OPPOSITE PARTY/S

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Appearance:

For the Petitioner/s : Mr. Alok Ranjan, Adv.

For the Opposite Party/s : Mr. Anant Kumar, APP

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI
C.A.V. ORDER

Date: 03-02-2017

Being aggrieved by and dissatisfied with an order dated 29.10.2012 passed by Praveen Kumar Singh, Judicial Magistrate, 1st Class, Patna in Complaint Case No.1435(c) of 2012 (Vikash Kumar vs. Sonu Kumar & Ors.) whereby and whereunder the learned Magistrate took cognizance of an offence punishable under Section 323,379 IPC and summoned the petitioners to face trial whereupon, petitioners above named preferred instant petition.

2. Regarding an occurrence allegedly committed on 16.05.2012 at about 08:00 P.M. complaint was filed on 26.05.2012 having an allegation that on account of assault having been made on 13.05.2012 for which Malsalami P.S. Case No.61 of 2012 was registered, against the accused/petitioners O.P. No.2/complainant had undergone treatment at Gurunanak Hospital, Patna City but for specialized treatment, he was to undergoing treatment at PMCH and for that, he was forced to live at



mohalla-Khemnichak due to fear of the accused. Then, it has been alleged that anyhow accused/petitioners got information and in the aforesaid background, they along with 5-6 unknown persons came at Khemnichak made house trespass and began to assault complainant. When mother and wife of complainant intervened, accused/petitioner Sonu Kumar assault his wife and snatched away ornaments while accused/petitioners Monu Kumar assaulted his mother and during course thereof, also taken away ear ring which had fallen down during course of scuffle. It has also been narrated that the accused persons/petitioners were insisting upon to execute a document to the effect that they will not claim building lying at Patna City. As the complainant/O.P. No.2 opposed, Anuj Kumar took away a bag containing rupees twenty thousand as well as they also caused mischief by breaking T.V. as well as table watch. Then it has been narrated that police was informed but on account of irresponsible conduct of the police case was not registered ultimately forced the complainant/O.P. No.2 to file complaint petition.

3. After entertaining complaint petition, O.P. No.2/complainant was examined on S.A., witnesses were examined during course of an enquiry under Section 202 Cr.P.C. and, finding prima facie case took cognizance of an offence and summoned the petitioners the subject matter of instant petition.

4. It has been submitted on behalf of petitioner that the order impugned happens to be mechanical one and so, is fit to be set aside. Furthermore, it has also been submitted that learned lower court should have considered that both the parties are Gotia and in the background of dispute relating to property which out rightly attracts civil litigation. That being so, the present shortcut method has been adopted by the O.P. No.2/complainant, to pressurize upon petitioners to give up their rightful



claim and so, submitted that instant prosecution being malafide as well as filed with an ulterior motive should not be allowed to prevail.

5. It has further been submitted that once there happens to be disclosure in the complaint petition that police was informed who failed to register a case, on account thereof, the learned lower court should have directed the police to register a case and investigate the same under 156(3) of the Cr.P.C. In likewise manner, it has been submitted that having been frustrated at the end of police officials declining to register a case, O.P. No.2/complainant should have taken recourse to follow the procedure prescribed under Section 154(3) Cr.P.C., which he failed and in likewise manner having absence of such effort will axe upon prosecution as, there happens to be considerable delay in launching prosecution without having proper explaiantion. To substantiate the same, learned counsel for the petitioners has also relied upon (2015) 6 SCC 287, 2012 (3) PLJR 91, 2010 (4) PLJR 888, 2013 (2) PLJR 571, 2011 (1) PLJR 755, 2016 (1) PLJR 923.

6. The learned Additional Public Prosecutor while controverting the submission having raised at the end of the petitioners has submitted that at the present moment, a prima facie case has to be seen which the learned lower court had identified after perusal of the S.A. as well as statement of the witnesses substantiating the allegation having so attributed by way of complaint petition. Consequent thereupon, the order impugned did not attract interference.

7. Now coming to the citations having referred on behalf of petitioners, it is evident that save and except **Dr. Ashok Kumar Jha & Anr. vs. State of Bihar & Anr.** reported in **2012 (3) PLJR 91** none one is applicable. In the aforesaid judgment (Dr. Ashok Kumar Jha) at para-8, it has been held:-



“8. How the jurisdiction of inherent power vested under Section 482 of the Cr.P.C. is to be exercised for that a reference may have 2010 Cr.L.J. 3844 and the relevant paragraph happens to be para-12 which has been formulated after taking into account, the identifiable cases (a) R.P. Kapur vs. State of Punjab, (b) State of Andhra Pradesh vs. Bajjoori Kanthaiah & Another, (c) State of Haryana vs. Bhajanlal & Ors.

“12. While exercising jurisdiction under Section 482 of the Code, the High Court would not ordinarily embark upon an enquiry whether the evidence in question is reliable or not or whether on a reasonable appreciation of it accusation would not be sustained. That is the function of the Trial Judge/Court. It is true that Court should be circumspect and judicious in exercising discretion and should take all relevant facts and circumstances into consideration before issuing process, otherwise, it would be an instrument in the hands of a private complainant to unleash vendetta to harass any person needlessly. At the same time, Section 482 is not an instrument handed over to an accused to short-circuit a prosecution and brings about its closure without full-fledged enquiry. Though High Court may exercise its power relating to cognizable offences to prevent abuse of process of any Court or otherwise to secure the ends of justice, the power should be exercised sparingly. For example, where the allegations made in the FIR or 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 or allegations in the FIR do not disclose a cognizable offence or do not disclose commission of any offence and make out a case against the accused or where there is express legal bar provided in any of the provisions of the Code or in any other enactment under which a criminal proceeding is initiated or sufficient material to show that the criminal proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused due to private and personal grudge, the High Court may step in. Though the powers possessed by the High Court under Section 482 are wide, however, such power requires care/caution in its exercise. The interference must be on sound principles and the inherent power should not be exercised to stifle a legitimate prosecution. We make it clear that if the allegations set out in the complaint do not constitute the offence of which cognizance has been taken by the Magistrate, it is open to the High Court to quash the same in exercise of inherent powers under Section 482.”

8. Recently in **Amanullah v. State of Bihar** reported in **2016**

CR.L.J. 2346, it has been held:-

“26. A careful reading of the material placed on record reveals that the learned CJM took cognizance of the offences alleged against the accused persons after a perusal of the case diary, charge-sheet and other material placed before the court. The cognizance was taken, as a prima facie case was made out against the accused persons. It is well settled that at the stage of taking cognizance, the court should not get into the merits of the case made out by the police, in the charge-sheet filed by them, with a view to calculate the success rate of prosecution in that particular



case. At this stage, the court's duty is limited to the extent of finding out whether from the material placed before it, the offence alleged therein against the accused is made out or not with a view to proceed further with the case. The proposition of law relating to Section 482 CrPC has been elaborately dealt with by this Court in *Bhajan Lal case (AIR 1992 SC 604)*. The relevant paras 102 and 103 of which read thus: (SCC pp. 378-79)

“102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised:

(1) Where the allegations made in the first information report 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 first information report and other materials, if any, accompanying the FIR 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 FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR 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 FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person 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 Act concerned (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 Act concerned, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance



on the accused and with a view to spite him due to private and personal grudge.

103. We also give a note of caution to the effect that 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 FIR or the complaint and that the extraordinary or inherent powers do not confer an arbitrary jurisdiction on the court to act according to its whim or caprice.”

Further, this Court in *Rajiv Thapar v. Madan Lal Kapoor* (2013) 3 SCC 330 has laid down certain parameters to be followed by the High Court while exercising its inherent power under Section 482 CrPC, in the following manner: (SCC pp. 347-49, paras 29-30)

“29. The issue being examined in the instant case is the jurisdiction of the High Court under Section 482 CrPC, if it chooses to quash the initiation of the prosecution against an accused at the stage of issuing process, or at the stage of committal, or even at the stage of framing of charges. These are all stages before the commencement of the actual trial. The same parameters would naturally be available for later stages as well. The power vested in the High Court under Section 482 CrPC, at the stages referred to hereinabove, would have far-reaching consequences inasmuch as it would negate the prosecution’s/complainant’s case without allowing the prosecution/complainant to lead evidence. Such a determination must always be rendered with caution, care and circumspection. *To invoke its inherent jurisdiction under Section 482 CrPC the High Court has to be fully satisfied that the material produced by the accused is such that would lead to the conclusion that his/their defence is based on sound, reasonable, and indubitable facts; the material produced is such as would rule out and displace the assertions contained in the charges levelled against the accused; and the material produced is such as would clearly reject and overrule the veracity of the allegations contained in the accusations levelled by the prosecution/complainant. It should be sufficient to rule out, reject and discard the accusations levelled by the prosecution/complainant, without the necessity of recording any evidence.* For this the material relied upon by the defence should not have been refuted, or alternatively, cannot be justifiably refuted, being material of sterling and impeccable quality. The material relied upon by the accused should be such as would persuade a reasonable person to dismiss and condemn the actual basis of the accusations as false. In such a situation, the judicial conscience of the High Court would persuade it to exercise its power under Section 482 CrPC to quash such criminal proceedings, for that would prevent abuse of process of the court, and secure the ends of justice.

30. *Based on the factors canvassed in the foregoing paragraphs, we would delineate the following steps to determine the veracity of a prayer for quashment raised by an accused by invoking the power vested in the High Court under*



Section 482 CrPC:

30.1. Step one: whether the material relied upon by the accused is sound, reasonable, and indubitable i.e. the material is of sterling and impeccable quality?

30.2. Step two: whether the material relied upon by the accused would rule out the assertions contained in the charges levelled against the accused i.e. the material is sufficient to reject and overrule the factual assertions contained in the complaint i.e. the material is such as would persuade a reasonable person to dismiss and condemn the factual basis of the accusations as false?

30.3. Step three: whether the material relied upon by the accused has not been refuted by the prosecution/complainant; and/or the material is such that it cannot be justifiably refuted by the prosecution/complainant?

30.4. Step four: whether proceeding with the trial would result in an abuse of process of the court, and would not serve the ends of justice?

30.5. If the answer to all the steps is in the affirmative, the judicial conscience of the High Court should persuade it to quash such criminal proceedings in exercise of power vested in it under Section 482 CrPC. Such exercise of power, besides doing justice to the accused, would save precious court time, which would otherwise be wasted in holding such a trial (as well as proceedings arising therefrom) specially when it is clear that the same would not conclude in the conviction of the accused.”

(emphasis supplied)

27. After considering the rival legal contentions urged by both the parties, case law referred to supra and the material placed on record, we are of the view that the High Court has exceeded its jurisdiction under Section 482 CrPC. It has erred in quashing the cognizance order passed by the learned CJM without appreciating the material placed before it in the correct perspective. The High Court has ignored certain important facts, namely, that on 17-10-2008, Appellant 1 was allegedly threatened by the accused Mukhtar for which FIR No. 104 of 2008 was registered against him for the offences punishable under Sections 25 and 26 of the Arms Act, 1959. Further, there are statements of various witnesses made under Section 164 CrPC, before a Judicial Magistrate, to the effect that the deceased has been murdered by none other than her husband Mukhtar. The evidence collected by the IO by recording the statements of the prosecution witnesses, filed along with the charge-sheet was duly considered by the learned CJM before taking cognizance and therefore, the same should not have been interfered with by the High Court in exercise of its inherent power under Section 482 CrPC.”

9. Now, coming to the order impugned it is evident that learned lower court had dealt with the S.A. of O.P. No.2/complainant along with other witnesses and on the basis thereof, opined presence of prima facie



case under Section 323, 379 of the IPC. Apart from this, the malicious prosecution as submitted on behalf of prosecution is not at all perceived at a glance in the background of the fact that apart from the present one, there happens to be specific disclosure in the complaint petition itself that at an earlier occasion also he was subjected to assault along with other kind of criminal activities and for that, a substantial case was registered which has not been controverted at the end of petitioners. The only ground having been raised on behalf of petitioners happens to be visualizing from para-11 of the petition divulging the fact that in the earlier case they were acquitted and the witness, during course of their evidence had not stated with regard to present incidence which, in the facts and circumstances of the case, was not at all vital one. Furthermore, acquittal has been recorded during course of pendency of present case.

10. That being so, I do not see any cogent reason to interfere with the order impugned. Consequent thereupon, instant petition is dismissed.

(Aditya Kumar Trivedi, J.)

Prakash Narayan

AFR/NAFR	N.A.F.R.
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