

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.45422 of 2013

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

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Gopal Jee Prasad, S/O Late Sheo Narayan Prasad, resident of 30/1e, Volt Valiganj, First Lane, Police Station- Karaya, Kolkata, West Bengal At Present Resident of Edward House (12 Flat), Hari Jee Ka Hata, Police Station- Ara Nawada, District- Bhojpur.

.... Petitioner

Versus

1. The State of Bihar.
2. Priya Prasad, wife of Late Ram Jee Prasad.
3. Binay Prakash, S/O Late Ram Jee Prasad.
4. Puja Prakash, D/O Late Ram Jee Prasad. All residents of 30/1E, Volt Valiganj, First Lane, Police Station- Karaya, Kolkata, West Bengal, At present resident of Edward House (12 Flat) Hari Jee Ka Hata, Police Station- Ara, Nawada, District- Bhojpur.

.... Opposite Parties

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Appearance :

For the Petitioner : Mr. Rahul Nath, Advocate.
For the State : Mr. Nityanand Tiwary, A.P.P.

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CORAM: HONOURABLE MR. JUSTICE SUDHIR SINGH
ORAL JUDGMENT
Date: 12-01-2017

Heard learned counsel for the petitioner and the learned
counsel for the State.

2. The present application has been filed for quashing the
order dated 06.06.2009, passed by learned Judicial Magistrate-Ist
Class, Bhojpur at Ara, in connection with T.R. No. 3847 of 2009,
arising out of Ara Nawada P.S. Case No. 41 of 2005, whereby
cognizance has been taken for the offence under Sections 420, 467,
468 and 471 of the IPC against the petitioner besides others.



3. The prosecution case, in brief, is that according to the family arrangement, the informant got first floor of the house having four flats. His younger brother-petitioner, has also got ground floor of the house having four flats. He further alleged that from the share of himself he has sold the Flat No. 04 to one Baijanti Devi Singh. But one Satyendra Kumar Singh forcibly took possession over the flat on the basis of rent receipt issued by younger brother-petitioner. Later on, the petitioner has sold the same to Satyendra Kumar Singh.

4. It has been submitted on behalf of learned counsel for the petitioner that the matter purely relates to a civil dispute. The present criminal prosecution has been filed with a malafide intention and ulterior motive. The matter related to the sale by the informant of the flat to one Baijanti Devi Singh and the said Baijanti Devi Singh had also filed a criminal case against the petitioner and other co-accused, namely, Satyendra Kumar Singh. For the same offence, there can not be two parallel prosecution against the petitioner. It is further submitted that the criminal proceeding instituted by Baijanti Devi Singh against the petitioner has already been quashed by another co-ordinate Bench of this Court vide Cr. Misc. No. 266 of 2005.

5. It has been submitted on behalf of learned counsel for the State that from perusal of the F.I.R., it is evident that a prima facie case is made out for an offence under Sections 420, 467, 468 and 471



of the I.P.C. and after investigation police has submitted charge-sheet against the petitioner. The specific accusation has been made against the petitioner that the property in question which belonged to the informant by way of fraud has been sold to an other co-accused, namely, Satyendra Kumar Singh.

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, 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, the present application, stands dismissed.

12. The interim stay granted to the petitioner vide order dated 29.10.2013, stands vacated.

(Sudhir Singh, J)

U.K./-

AFR/NAFR	NAFR
CAV DATE	NA
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