

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.47012 of 2014

Arising Out of PS. Case No.-2024 Year-2011 Thana- BHAGALPUR COMPLAINT CASE
District- Bhagalpur

Ashutosh Mukherjee S/o Late Sitanshu Mukherjee Resident of Mohalla Bari Khanjarpur, 7, Maharaja Ghat Road, Khanjarpur, P.S. Barari, District Bhagalpur presently residing at Madhyam Gram 380/7 Ankur Apartment, Police Barsat, Kolkata (West Bengal).

... .. Petitioner/s

Versus

1. The State of Bihar
2. Gangadhar Mandal S/o Late Baijnath Mandal Resident of Mohalla Bari Khanjarpur, Maharaja Ghat Road, Police Station Barari, District Bhagalpur.
3. Senior Superintendent of Police, Bhagalpur
4. District Magistrate, Bhagalpur

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr. Kali Prasanna Dubey, Advocate
For the Opposite Party/s	:	Ms. Geeta Kumari Jha, Advocate
For the State	:	Mr. Jharkhandi Upadhyay, APP

**CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN
AMANULLAH**

ORAL JUDGMENT

Date : 18-04-2019

Heard learned counsel for the petitioner; Mr. Jharkhandi Upadhyay, learned Additional Public Prosecutor (hereinafter referred to as the 'APP') for the State and the learned counsel for the opposite party no. 2.

2. The petitioner has moved the Court under Section 482 of the Code of Criminal Procedure, 1973 (hereinafter referred to as the 'Code') for the following relief:

*“That this is an application for quashing
the order dated 31.01.2013 passed by the Learned*



Judicial Magistrate 1st Class, Bhagalpur in complaint case no. 2024 of 2011 who issued process against the petitioner without application of his judicial mind as well as contrary to the settled law. While taking cognizance under sections 387, 506 and 504/34 of Indian Penal Code that to when no offences is constituted in the fact and circumstances of this case if entree prosecution story taken to true rather a frivolous case has been filed by the complainant.” [sic]

3. By order dated 19.02.2019, a report was called for from the Senior Superintendent of Police, Bhagalpur (hereinafter referred to as the ‘SSP’) in the following terms:

“3. Coming to the merits, the Court deems it appropriate to direct the Senior Superintendent of Police, Bhagalpur to submit a report after getting an enquiry conducted through a senior police officer under him with regard to whether the cousin brother of the petitioner, namely Pradeep Kumar Mukherjee is of sound mind and further whether he had executed any Power of Attorney in favour of the co-accused Bhuneshwar Sah. Further, he shall submit a report with regard to the lands belonging to the petitioner and his cousin, being part of common ancestral property of late Sudhanshu Mukherjee, which has been bought by the opposite party no. 2 through the so called daughters of the cousin sister of the petitioner, relating to 62.5 decimals and 72 decimals of the total land.”

4. Upon perusal of the report submitted in the aforementioned terms, the Court had recorded the following in its order dated 04.04.2019:

“3. Perusal of the report indicates that the stand of the petitioner stands vindicated with regard to the fact that the Power of Attorney in



question could not have been executed by the cousin brother of the petitioner namely Pradeep Kumar Mukherjee and that there is no trace of the sister of Pradeep Kumar Mukherjee and, thus, there cannot be any question of any general Power of Attorney given by her to Jaya Chakravarty, as contended in the complaint.”

5. Gangadhar Mandal, opposite party no. 2, resident of Bari Khanjarpur, Bhagalpur lodged a complaint on 22.10.2011 in the Court of the Chief Judicial Magistrate, Bhagalpur alleging therein, *inter alia*, that after retirement, he purchased two plots of land from Jaya Chakravarty and Moni Chakravarty at Mauza Kurban, P.S.-Mazahidpur, District-Bhagalpur on 18.01.2010 and 07.06.2010 through registered sale deeds of area 62½ decimals and 72 decimals respectively.

6. The complainant further stated that Jaya Chakravarty was the grand-daughter (*Natini*) of Late Sitanshu Mukherjee and the land in question was mutated in the name of his wife Shanti Mukherjee and after the deaths of Sitanshu Mukherjee and Shanti Mukherjee, the right title and interest of the said land devolved on their heirs namely, son Pradeep Kumar Mukherjee and daughter Madhuri Mukherjee. It has been stated that on the verbal partition, house standing at Khanjarpur had come in the share of Pradeep Kumar Mukherjee and the land in question went to Madhuri Mukherjee. He further stated that on



09.01.2010, Madhuri Mukherjee executed a General Power of Attorney to Jaya Chakravarty, who sold the land in question to him through registered sale deed for 62½ decimals land on 18.01.2010, the said Jaya Chakravarty sold 72 decimals land to Moni Chakravarty and from Moni Chakravarty, he purchased 72 decimals of land through registered sale deed and came in possession of the said land(s).

7. The complainant further stated that the accused persons after knowing the aforesaid sale, on the basis of false Power of Attorney dated 22.12.2010, by placing a fake person in place of Pradeep Kumar Mukherjee, executed at Patna, despite Pradeep Kumar Mukherjee never going out due to his mental sickness and further, that from his purchased land of 72 decimals, co-accused Muneshwar Sahu sold the land to Kamal Prasad Yadav, accused no. 2, and Mahendra Prasad Sah, accused no. 3.

8. It was further stated that when he came to know about the aforesaid fraud committed by accused no. 1 to 4, who are related to each other and the land mafia, he went to inquire about the same from cousins of Pradeep Kumar Mukherjee who have also been made accused at serial no. 6 to 9 in the complaint petition, where he was allegedly told by the petitioner that they



have mutated the entire land including the house in their name in 2009-10 itself on the basis of family partition in which they have left out Madhuri Mukherjee from the said document after obtaining thumb impression of Pradeep Mukherjee, and further they had threatened in hard words that the land mafia will destroy him.

9. Learned counsel for the petitioner submitted that even after going through the entire complaint, no offence is made out against the petitioner except for a general statement that when the complainant went to meet the petitioner, he stated that he had got partition made on the basis of thumb impression of his cousin Pradeep Kumar Mukherjee, who was of unsound mind and had left out the sister of cousin Pradeep Kumar Mukherjee, namely Madhuri Mukherjee, and then in a hard tone, the petitioner has stated that the land mafia would destroy the complainant. Learned counsel submitted that, in fact, by the said transaction, the petitioner also has suffered as his ancestral property has been sold by persons who have no right or title over those lands and in a manner which is totally fraudulent and on the basis of forged documents. Learned counsel submitted that prior to filing of the complaint, he had made application to the Superintendent of Police, Bhagalpur (hereinafter referred to as



the 'SP') on 08.05.2010 stating that two girls have been moving in the area claiming to be the daughters of Jaya Chakravarty that is, the sister of Pradeep Kumar Mukherjee, who after marriage in the year 1978-80 had never been in touch with the family and nothing was known about her and that when he confronted the two ladies who were posing as daughters of Madhuri Mukherjee, they could not satisfy the petitioner with regard to their identity. It was submitted that for the entire land, the petitioner's family had paid Government revenue. It was submitted that a petition was also filed before the *Anchal Adhikari*, Bhagalpur by the petitioner on 11.10.2010 informing him with regard to the sister of Pradeep Kumar Mukherjee not being in contact with the family for the last 30 years and also that total strangers were claiming to be the daughters of Jaya Chakravarty and, thus, request was made that they should be asked to appear in person so that the truth could be known.

10. Learned counsel submitted that much thereafter, the present complaint has been filed on 22.10.2011. Learned counsel submitted that initially when the opposite party no. 2 had filed for mutation, the Circle Officer was not proceeding in view of the complaint made by the petitioner before the SP, Bhagalpur and the *Anchal Adhikari*, Bhagalpur, but soon after cognizance



was taken in the present case, he has allowed the mutation. It was submitted that from the document of mutation and the family certificate issued by the *Anchal Adhikari*, which has been brought on record by the opposite party no. 2 himself in his counter-affidavit, it would be clear that the mutation case itself was filed in the year 2013-14 and the order is dated 25.06.2013. It was submitted that, from the correction slip issued by the *Anchal Adhikari*, Jagdishpur (Bhagalpur), it would be apparent that based on the so-called sale deed No. 626 dated 18.01.2010, in favour of the opposite party no. 2, the land pertaining to *Khata* No. 13 and *Khesra* No. 166, has been mutated in the name of the opposite party no. 2, for an area showing 67¼ decimals, which clearly exposes the illegality, inasmuch as, by the said sale deed, only 62 decimals of land has been sold to the opposite party no. 2 and, thus, there could not have been mutation in his favour for an area of 67¼ decimals.

11. Similarly, the family certificate issued by the *Anchal Adhikari*, Jagdishpur (Bhagalpur) bearing no. 148 dated 19.05.2010, is based on the enquiry report of the *Halka Karamchari/Anchal Nirikshak*. Learned counsel submitted that the same has been issued to one Moni Chakravarty, who claims to be the daughter of Madhuri Mukherjee and the address shown



is the address of the petitioner. Learned counsel submitted that in the enquiry entrusted by the Court to the SSP, Bhagalpur, it has emerged that there was no trace of Madhuri Mukherjee since last about 15-20 years. It was further stated in the enquiry that there was no partition of the ancestral property. It was submitted that the report also discloses that there could not have been any possibility of Pradeep Kumar Mukherjee having executed any Power of Attorney as he was of unsound mind and did not move out of his house and further that he could not even speak coherently. Learned counsel submitted that, in fact, the opposite party no. 2 and others have been creating forged documents and trying to deal with the lands by even selling them in a blatantly illegal manner. Learned counsel submitted that coming to the present case, except for a passing reference with regard to the petitioner having said in a strong voice with regard to land mafia destroying the opposite party no. 2, neither any direct allegation has been levelled against him nor any overt act, which may indicate criminal offence has been alleged against him.

12. Learned APP fairly submitted that the complaint does not disclose any criminal offence as far as the petitioner is concerned and even some passing reference to the behaviour of the petitioner would not justify such prosecution. He further



submitted that in view of the specific and clear-cut report submitted by the SSP, Bhagalpur, it was apparent that the basis of sale deeds in favour of the opposite party no. 2 itself was under cloud as there was sufficient materials to indicate that the sale deeds had been executed by unknown persons.

13. Learned counsel for the opposite party no. 2 was also not in a position to controvert the submissions of learned counsel for the petitioner. Moreover, on a specific query of the Court as to what portion of the allegation would justify criminal prosecution of the petitioner, as far as the present complaint case is concerned, learned counsel could not point out any portion of the complaint which could justify such prosecution.

14. Having considered the facts and circumstances of the case and submissions of learned counsel for the parties, the Court finds that a case for interference has been made out.

15. As has rightly been submitted by learned counsel for the petitioner, except for a general and vague allegation that the petitioner had told him that he had got the entire property mutated in the name of his family branch, on the basis of family partition, which cannot be said to be indicative of any criminal offence as no co-sharers have made any allegation against the petitioner, the only portion which can be remotely connected to



some criminal offence is the allegation in the complaint case that the petitioner threatened the opposite party no. 2 that the land mafia will destroy him. This limited allegation in the complaint petition against the petitioner, leading to taking of cognizance against the petitioner also, in the considered opinion of the Court, is a total abuse of the process of the Court. This Court further finds that even the Court below has absolutely not applied its judicial mind in the matter and appears to have proceeded in a mechanical manner without bothering to even go through the averments made in the complaint petition itself. This Court can only comment that it is indicative of a sorry state of affairs prevailing where even Courts of law are passing orders which have serious consequences for the person(s) concerned in a casual manner without any semblance of responsibility shown on their part.

16. The Hon'ble Supreme Court in **State of Haryana v. Bhajan Lal** reported as **1992 Supp (1) SCC 335**, at paragraph no. 102 has enumerated categories where the Court is required to interfere under its inherent power under Section 482 of the Code. The same reads as under:

“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 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 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.”

17. The present case, in the opinion of the Court, is covered under categories 1 and 7 of the aforesaid judgment in **Bhajan Lal** (*supra*).

18. Further, the Hon'ble Supreme Court in **State of Karnataka v. L. Muniswamy** reported as (1977) 2 SCC 699, where at paragraph no. 7, held the following:

“7.In the exercise of this wholesome power, the High Court is entitled to quash a proceeding if it comes to the conclusion that allowing the proceeding to continue would be an abuse of the process of the Court or that the ends of justice require that the proceeding ought to be quashed. The saving of the High Court's inherent powers, both in civil and criminal matters, is designed to achieve a salutary public purpose which is that a Court proceeding ought not to be permitted to degenerate into a weapon of harassment or persecution. In a criminal case, the veiled object behind a lame prosecution, the very nature of the material on which the structure of the prosecution rests and the like would justify the High Court in quashing the proceeding in the interest of justice.....”



19. In the aforesaid background, the Court inescapably finds that the prosecution is *mala fide*, untenable and solely intended to harass the petitioner.

20. Accordingly, the application is allowed. The entire criminal proceeding arising out of Complaint Case No. 2024 of 2011, pending before the Court below at Bhagalpur, including the order dated 31.01.2013, by which cognizance has been taken, as far as it relates to the petitioner, stands quashed.

21. Long ago, in **State of Uttar Pradesh v. Mohammad Naim** reported as **AIR 1964 SC 703**, the Hon'ble Supreme Court, in respect of Section 561-A of the Code of Criminal Procedure, 1898 (hereinafter referred to as the '1898 Code') observed at paragraphs no. 7 and 8:

“7. The first point which falls for consideration is whether the State of Uttar Pradesh had locus standi to make the application under Section 561-A CrPC. We may first read the section:

“Nothing in this Code shall be deemed to limit or affect the inherent power of the High Court to make such order as may be necessary to give effect to any order under this Code, or to prevent abuse of the process of any court or otherwise to secure the ends of justice.”

8. It is now well settled that the section confers no new powers on the High Court. It merely safeguards all existing inherent powers possessed by a High Court necessary (among other purposes) to secure the ends of justice. The section provides that those powers which the court inherently possesses shall be preserved lest it be considered that the only powers possessed by the court are those expressly



conferred by the Code and that no inherent powers had survived the passing of the Code (see *Jairam Das v. Emperor* [AIR 1945 PC 94] and *Emperor v. Nazir Ahmad* [AIR 1945 PC 18])..." (emphasis supplied)

22. Needless to state, Section 482 of the Code is a reproduction of Section 561-A of the 1898 Code. In **State v. Navjot Sandhu** reported as (2003) 6 SCC 641, at paragraph no. 29, the Hon'ble Supreme Court, observed as under:

"29. ...The inherent power is to be used only in cases where there is an abuse of the process of the court or where interference is absolutely necessary for securing the ends of justice..." (emphasis supplied)

23. In **Jitendra Raghuvanshi v. Babita Raghuvanshi** reported as (2013) 4 SCC 58, the Hon'ble Supreme Court in paragraph no. 14 opined:

"14. The inherent powers of the High Court under Section 482 of the Code are wide and unfettered..." (emphasis supplied)

24. In **Parbatbhai Aahir v. State of Gujarat** reported as (2017) 9 SCC 641, the Hon'ble Supreme Court, at paragraphs no. 11, 16.1 and 16.4 held:

"11. Section 482 is prefaced with an overriding provision. The statute saves the inherent power of the High Court, as a superior court, to make such orders as are necessary (i) to prevent an abuse of the process of any court; or (ii) otherwise to secure the ends of justice..."

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16.1 Section 482 preserves the inherent powers of the High Court to prevent an abuse of the process of any court or to secure the ends of justice. The provision does not confer new powers. It only recognises and preserves powers which inhere in the High Court.

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16.4. While the inherent power of the High Court has a wide ambit and plenitude it has to be exercised (i) to secure the ends of justice, or (ii) to prevent an abuse of the process of any court.”
(emphasis supplied)

25. It would be pertinent to point out observations of this Court in **Rupesh Kumar v. The State of Bihar [Cr. Misc. No. 30470 of 2016, order dated 21.02.2019]** at paragraphs no. 9 and 15:

“9. From the aforesaid, it is abundantly clear that this Court has an inherent duty to ensure that whenever it comes across materials which justify a particular course of action, it should not shy away from discharging its constitutional obligations ...

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15... Moreover, every Court of extraordinary jurisdiction, more so a Constitutional Court, like the High Court, has an inherent original power vested in it, where, for securing the ends of justice, certain exercise of power, if required, may be resorted to. Such extraordinary power cannot be curtailed, except that it be invoked in necessary circumstances.” (emphasis supplied)

26. The High Court, being a Constitutional Court, retains enormous and inherent powers to act in the interest of justice. Suffice it would, to state that any limitation whatsoever in exercise of such power, would be self-imposed, based on the



Court's discretion, having due regard to the peculiar facts and circumstances of the case. Under Section 482 of the Code, the High Court only exercises the extraordinary powers it possesses by virtue of the fact that it is a High Court. Section 482 of the Code begins with a *non-obstante* clause and, as such, the High Court's interminable jurisdiction cannot be fettered or whittled down.

27. This Court, or, for that matter, any Court, cannot and will not shy away from utilising its inherent powers in the pursuit of justice. Having dealt with the matter on merits, exercising power under its inherent jurisdiction under Section 482 of the Code which is for the twin purposes of preventing abuse of the process of the Court and for securing the ends of justice, the Court is persuaded to issue further directions in the following terms:

(a) The SSP, Bhagalpur shall get the entire matter investigated by a special team headed by a senior and competent officer, who has a good reputation with regard to transfer of the ancestral lands of the petitioner through Power of Attorney. The starting point would be the report already submitted to the Court in the present case by the SSP, Bhagalpur under his Letter No. 135 dated 30.03.2019, enclosing the report submitted to him by



the Deputy Superintendent of Police, Town, Bhagalpur in Memo No. 1097/City dated 13.03.2019. The enquiry shall also ascertain as to whether the persons who are the executors of various Power of Attorney/sale deeds are real or fictitious. The same be done within two months from today. Based on the same, appropriate proceeding(s) shall be instituted which also would be taken to their logical conclusion within two months thereafter. The role of the officers involved in mutation as also issuance of family certificate to the so-called daughter of the sister of Pradeep Kumar Mukherjee shall also be gone into in the enquiry to be conducted by the SSP, Bhagalpur.

(b) The District Magistrate, Bhagalpur is also directed to get a thorough enquiry conducted by a senior officer with regard to the role of the officers in the district in the mutation of lands in favour of the opposite party no. 2 and others as also issuance of family certificate to the so-called daughter of the sister of Pradeep Kumar Mukherjee which, from the report submitted by the SSP, Bhagalpur, as referred above, indicates serious illegality, as the officials have passed orders in favour of the opposite party no. 2 and others relating to mutation and also issued family certificate to fictitious persons or based on documents, the authenticity of which, has come under serious



doubt. He shall also ensure that such exercise is taken to its logical conclusion within two months.

28. The Court deems it appropriate to implead the District Magistrate, Bhagalpur as opposite party no. 4. Let necessary correction be made in the cause-title of the application by learned counsel for the petitioner during the course of the day.

29. Mr. Jharkhandi Upadhyay, learned APP accepts notice on behalf of the newly-added opposite party no. 4. He shall also communicate the order, both to the District Magistrate, Bhagalpur and the SSP, Bhagalpur, for strict compliance of the same.

30. Registry shall also communicate the order to the opposite parties no. 3 and 4 forthwith.

(Ahsanuddin Amanullah, J.)

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