

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.4337 of 2015

Arising Out of PS Case No.-43 Year-2010 Thana- SAMASTIPUR GRP CASE District-
Samastipur

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Md. Zakaullah S/o Anwarul Haque Resident of Village Mahuli Tola, Police
Station Jale, District Darbhanga.

... .. Petitioner/s

Versus

1. The State of Bihar
2. Gopal Prasad Singh S/o Not known Inspector, Crime Information Bureau,
North Eastern Railway, Samastipur.

... .. Opposite Party/s

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Appearance :

For the Petitioner/s	:	Mr. Rajesh Ranjan with Mr. Sajid Salim Khan, Advocates
For the State	:	Mr. Jharkhandi Upadhyay, APP

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CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH
ORAL JUDGMENT

Date : 10-05-2019

Heard learned counsel for the petitioner; learned APP for
the State and learned counsel for the Railways.

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
cognizance order dated 03.01.2011 passed in R.P.F.
S.M.I. 43 of 10/Tr. 809 of 2011 passed by learned
Railway Judicial Magistrate, Samastipur, whereby the
learned Magistrate has taken cognizance against the
petitioner under section 143 of the Railway Act, 1989.”*

3. The allegation against the petitioner and another
accused was of black marketeering of railway tickets. Against the



petitioner, it is specific that on prior information, the petitioner being identified, when confronted, from his possession, one ticket in his name and five blank reservation slips were recovered. On the said complaint, the Court has taken cognizance on 03.1.2011, which is impugned in the present application.

4. Learned counsel for the petitioner submitted that the allegation is only that there is suspicion that the petitioner was black marketeering of Railway tickets by buying tickets in his name but showing the age differently. Learned counsel submitted that such bald and mere suspicion cannot be the basis for lodging of a criminal case, moreso, for the reason that the ticket which was recovered from the possession of the petitioner, was in his name and showed the date of birth, as was recorded in his Election Photo Identity Card, which was also recovered from him. Learned counsel submitted that when a ticket in the name of the petitioner showing his real date of birth was only recovered, there cannot be any criminal prosecution only by raising mere suspicion that he used to indulge in black marketeering by buying tickets in his name showing different age. Learned counsel submitted that possession of five reservation slips can in no way be the basis of a criminal prosecution.



5. Learned APP and learned counsel for the Railways submitted that the petitioner is suspected of black marketeering of tickets and, thus, he is required to face trial and further, that the cognizance taken by the Court below is justified. However, on a direct query of the Court as to what is the material to allege that the petitioner used to buy tickets by showing different age, as only one ticket in his name showing his correct age was recovered and only five blank reservation slips, learned counsel were not in a position to meet the query of the Court.

6. 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.

7. As has rightly been submitted by learned counsel for the petitioner, the allegation that the petitioner used to sell Railway tickets on the black market by buying the same in his name but showing different age, is too tenuous a ground to justify criminal action, moreso in the face of the fact that the only material recovered from his possession was a Railway ticket, that too, in the name of the petitioner himself and also showing his correct age based on the Election Photo Identity Card. Thus, in the considered opinion of the Court, the same can in no way justify the launching of a criminal prosecution against the petitioner. The Court would



only observe that initiation of a criminal proceeding against any person has serious penal consequences which cannot be so lightly set into motion. At the cost of repetition, what material has been recovered absolutely does not constitute or can be a basis for any criminal prosecution. Thus, only a bald reference that the petitioner used to deal in black marketeering of Railway tickets by buying tickets in his name by showing different age, without there being any material to corroborate or substantiate the same, clearly is an abuse of the process of the Court.

8. The Hon'ble Supreme Court in **State of Haryana v. Bhajan Lal** reported as **1992 Suppl (1) SCC 335**, at paragraph no. 102, has enumerated categories where the Court ought to exercise 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 omission 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.”

9. The present case, in the opinion of the Court, falls under categories 1 and 7 of the aforesaid judgment in **Bhajan Lal** (supra) at paragraph no. 102.

10. Further, the Hon’ble Supreme Court in **State of Karnataka v. L. Muniswamy** reported as (1977) 2 Supreme Court Cases 699 at paragraph no. 7 has observed as under:

“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.....”

11. In the aforesaid background, the Court finds that the present case is absolutely unsustainable and has been filed to



harass the petitioner and, thus, clearly an abuse of the process of the Court.

12. Accordingly, the application is allowed. The entire criminal proceeding arising out of R.P.F. (S.M.I.) 43 of 2010 (T.R. No. 809 of 2011), including the order dated 03.01.2011, by which cognizance has been taken, pending before the Railway Judicial Magistrate, Samastipur, as far as it relates to the petitioner, stands quashed.

(Ahsanuddin Amanullah, J)

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