

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.15384 of 2015

Arising Out of PS. Case No.-22 (O.C.) Year-1993 Thana- GOVERNMENT OFFICIAL
COMP. District- West Champaran

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Baidyanath Mishra retired IAS, S/O late Ramprikshan Mishra, the then General Manager of Lauriya Unit of B.S.S.C. Ltd., presently residing at Quarter No. D 69, 2nd floor, Rajesh Kumar Path, near Basawan Park, Srikrishnapuri, Patna-1

... .. Petitioner/s

Versus

The State of Bihar through The Secretary, Excise and Prohibition Department, Government Of Bihar, New Secretariat, Vikas Bhawan, Patna.

... .. Opposite Party/s

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Appearance :

For the Petitioner/s	:	Mr. Binod Kumar Singh with Ms. Vagisha, Advocates
For the State	:	Mr. Jharkhandi Upadhyay, APP

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CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH
ORAL JUDGMENT

Date : 14-05-2019

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

2. Yesterday, though nobody had appeared on behalf of the petitioner and the matter was adjourned for today, learned counsel for the petitioner submitted that she has no instructions and took leave of the Court to attend to her other matters.

3. 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 on behalf of the Petitioner for quashing part of order dated 9.5.2013 passed in Cr.Rev. No.42/2013 {heard along with Cr. Rev.



No.32/2013 (Girish Shankar v. The State of Bihar)} by the learned Sessions Judge, West Champaran Bettiah whereby and whereunder although the learned Sessions Judge was pleased to set aside the issuance of non bailable warrant of arrest against the petitioner issued by order dated 25.1.2013 passed by Mr. Pranav Shankar, Judicial Magistrate, 1st Class, Bettiah passed in Official Complaint Case No.22(O.C.)/1993; but the learned Sessions Judge in para-19 of the impugned order directed t“That this is an application on behalf of the Petitioner for quashing part of order dated 9.5.2013 passed in Cr.Rev. No.42/2013 {heard along with Cr. Rev. No.32/2013 (Girish Shankar v. The State of Bihar)} by the learned Sessions Judge, West Champaran Bettiah whereby and whereunder although the learned Sessions Judge was pleased to set aside the issuance of non bailable warrant of arrest the petitioner to appear before the learned Magistrate without any further delay ignoring the plea of the petitioner made with respect of non compliance of Sections 63 & 305 Cr.P.C.”

4. As per Official Complaint Case No. 22 of 1993 filed before the Chief Judicial Magistrate, Bettiah, West Champaran on 19.04.1993, by the Excise Superintendent, Bettiah, West Champaran against (1) The Bihar State Sugar Corporation Limited through Managing Director; (2) The General Manager, The Bihar State Sugar Corporation Limited, Unit Lauria, West Champaran; (3) The Assistant General Manager, The Bihar State Sugar Corporation Limited, Unit Lauria, West Champaran and (4) The Cane Manager, The Bihar State Sugar Corporation Limited, Unit Lauria, West Champaran alleging that as per the audit report



submitted by the Accountant General for the year 1991-92, due to wastage of molasses by the Unit, there was loss of Government revenue to the tune of Rs. 1,91,13,975/- for which the accused were held liable.

5. From the pleadings, especially the complaint, it is an admitted fact that the audit with regard to loss of molasses related to the year 1991-92 i.e., from 1st April, 1991 to till 31st March 1992. The accused also were made party by designation. However, the Court took cognizance by order dated 24.04.1993 when the petitioner was holding the post of General Manager of the Unit (accused no. 2), having joined such post on 02.11.1992 and Mr. Girish Shankar, the Managing Director of the Bihar State Sugar Corporation Limited (accused no. 1) who had also joined the post on 03.11.1992. As the Court had taken cognizance against the accused nos. 1 and 2 only, i.e., the Managing Director, Bihar State Sugar Corporation Limited and the General Manager of its Lauria Unit, the persons who were holding such post on 24.04.1993, i.e., the date of taking of cognizance, Mr. Girish Shankar, the Managing Director and the petitioner being the General Manager, they filed an application before the Court concerned under Section 205 of the Code seeking exemption from appearance. The same was rejected by order dated 13.04.1994. Being aggrieved, they



moved this Court in Cr. Misc. No. 7581 of 1994 which was allowed by a coordinate Bench on 15.09.1999 and the personal appearance of the officers, including the Managing Director and the petitioner, was dispensed with and they were allowed to be represented through their counsel until further order of the trial Court. Later, the Judicial Magistrate, 1st Class before whom the matter was pending, by order dated 25.01.2013 issued non-bailable warrant against the petitioner and Mr. Girish Shankar. The same was assailed by Mr. Girish Shankar in Cr. Revision No. 32 of 2013 and the petitioner in Cr. Revision No. 42 of 2013 before the Sessions Judge, West Champaran, Bettiah, which was allowed by order dated 09.05.2013. However, the petitioner and Mr. Girish Shankar were directed to appear before the Trial Court and cooperate in disposal of the case. Aggrieved by the said direction to appear, the petitioner preferred the present application.

6. No counter affidavit has been filed on behalf of the opposite party, i.e., the State of Bihar through the Secretary, Excise and Prohibition Department, Government of Bihar, despite copy of the application being served on learned counsel appearing on his behalf on 10.03.2015, i.e, more than four years back. Thus, the Court is accepting the facts as stated in the application which are



also borne out from various annexures to the application, including the orders passed by the Courts.

7. From the aforesaid, the following facts are admitted:

(a) The complaint relates to the period 1st April, 1991 to 31st March, 1992, with regard to wastage of molasses leading to loss of Government revenue.

(b) In the complaint, the accused were not individuals and are the Bihar State Sugar Corporation Limited and the General Manager, Assistant General Manager and the Cane Manager of its Unit Lauria in the district of West Champaran.

(c) Cognizance was taken by the Court below by order dated 24.04.1993 against the Managing Director of the Bihar State Sugar Corporation Limited and the General Manager of its Lauria Unit, West Champaran, i.e., accused nos. 1 and 2, respectively, under Sections 403, 409, 413, 421, 420, 437, 467, 471 and 120 B of the Indian Penal Code.

(d) Mr. Girish Shankar joined on the post of Managing Director of the Bihar State Sugar Corporation Limited on 03.11.1992 whereas the petitioner joined as the General Manager of Lauria Unit on 02.11.1992. Such fact is recorded in the order of the coordinate Bench dated 15.09.1999 in Cr. Misc. No. 7581 of 1994 at paragraph no. 5, internal page 3.



8. From the aforesaid, it is clear that neither of the two accused against whom cognizance has been taken were holding the post or were incharge of the affairs of either the Bihar State Sugar Corporation Limited or its Lauria Unit for the period 1st April, 1991 to 31st March, 1992, when the offence is alleged to have been committed. They came to hold the post much later in November, 1992. Thus, they can in no way be said to be accountable for any act of omission or commission committed by their predecessors, as no liability can be fastened on them for the period when they were not holding office.

9. On power under Section 482 of the Code, it is apt to quote the view of this Court, as expressed in **Ashutosh Mukherjee v. The State of Bihar [Cr. Misc. No. 47012 of 2014, judgement dated 18-04-2019]**, specifically paragraphs no. 21 to 26 which read as under:

*“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."

10. The Hon'ble Supreme Court in **State of Haryana v. Bhajan Lal** reported as **1992 Supplementary (1) Supreme Court Cases 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.”



11. The present case, in the opinion of the Court, falls under categories 1, 3 and 7 of the aforesaid judgment in **Bhajan Lal** (supra) at paragraph no. 102.

12. 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.....”

13. The Court finds that it is a fit case where it should exercise its inherent power under Section 482 of the Code, both to prevent the abuse of the process of the Court as well as to secure the ends of justice, as the prosecution against the petitioner is totally untenable in the eyes of law.

14. As the case of the petitioner and that of Mr. Girish Shankar are identical on facts which are relevant for considering



the present application, the Court further deems it just and proper to exercise its inherent power under Section 482 of the Code and, thus, the present order shall also apply in the case of Mr. Girish Shankar, the then Managing Director of the Bihar State Sugar Corporation Limited.

15. Accordingly, the application is allowed. The entire criminal proceeding relating to Official Complaint Case No. 22 (O.C.) of 1993, pending before the Court below at Bettiah, West Champaran, including all orders which may have been passed by the Courts below relating to the said case, stand quashed.

(Ahsanuddin Amanullah, J)

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