

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No. 17196 of 2012

Manish Kedia Son of Om Prakash Kedia, Resident of Mohalla - Panchvati
Banglagarh, P.S. Vishwavidyalaya, District – Darbhanga.

... .. Petitioner/s

Versus

1. The State of Bihar through Vigilance.
2. Dy SP, Head Quarter, Darbhanga.

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr. P. K. Shahi, Sr. Advocate Mr. Alok Kumar Agrawal and Mr. Mohit Agrawal, Advocates
For the State	:	Mr. Jharkhandi Upadhyay, A.P.P.
For the Vigilance	:	Mr. Ajay Kumar Mishra, Advocate

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

ORAL JUDGMENT

Date : 03-01-2019

Heard Mr. P. K. Shahi, learned senior counsel assisted
by Mr. Alok Kumar Agrawal, learned counsel for the petitioner
and Mr. Ajay Mishra, learned counsel for the Vigilance.

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 the present application is being filed
for quashing of the order taking cognizance dt.
16.11.2011 passed in Darbhanga Town P.S. Case no.
86/2011 giving rise to Special Case No. 8/11 under
Section 7, 8, 13(2) read with Section 13(1)(d) of the
Prevention of Corruption Act, 1988 by the Special
Judge, Vigilance, Muzaffarpur.*



3. The allegation against the petitioner is that he was present in the Hotel room in which officers were there, who has taken illegal gratification of Rs. 25,000/- from the complainant which was recovered by the raiding team from the possession of one Manoj Kumar, Assistant Director, Plant Protection.

4. Learned counsel for the petitioner submitted that before coming to the merits of the case, cognizance against the petitioner under Sections 7, 8, 13(2) read with Section 13 (1) (d) of The Prevention of Corruption Act, 1988 (hereinafter referred to as the 'Act') is totally misconceived for the reason that only persons, who are 'public servant', as defined in the Act can be charged under such sections and admittedly the petitioner is a private person doing his own business. Learned counsel submitted that even on merits, from the petitioner a Mobile Set and Rs. 21,000/- cash was recovered but even those are not alleged to have been part of any illegal transaction, much less the money given by way of bribe, as the notes which were signed for identification amounting to Rs. 25,000/- has been recovered from the possession of co-accused Manoj Kumar. Learned counsel submitted that the presence of the petitioner in the Hotel room was a mere coincidence as the petitioner is also into the business of Seeds and Fertilizers along with his father in the name and style of Mithila



Traders, and in such connection, he had gone to meet the officers, who had come from Patna and were staying in the Hotel, by way of courtesy call.

5. Learned counsel for the Vigilance submitted that at the stage of cognizance, the Court has only to *prima facie* see what has come during investigation and this Court would thus, not interfere in the matter. However, to the specific query of the Court as to how the petitioner could be charged under the aforesaid Section of the Act, not being a 'public servant', as defined under the Act, learned counsel admitted that the petitioner would not come under such definition.

6. Learned counsel for the petitioner, by way of reply submitted that in the recent judgment of the Hon'ble Supreme Court dated 15th November, 2018 in **Criminal Appeal No. 1395 of 2018 [Arising out of SLP (Cri.) No. 3730 of 2016]** in the case of **Anand Kumar Mohatta and Anr. Vs. State (Govt. of NCT of Delhi) Department of Home and Anr.**, the Supreme Court relying upon previous decisions held that interference under Section 482 of the Code can be made at any stage.

7. 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. Admittedly,



the petitioner is not a 'public servant'. Moreover, at best, he was only present in the room from which the raiding party recovered Rs. 25,000/- given by the complainant to Manoj Kumar, an Officer of the Agriculture Department and from whose possession, the same has been recovered.

8. Further, the stand of learned counsel for the petitioner that being in the business of trading of Seeds and Fertilizers, he had gone to meet the officers in connection with his business, appears to be a natural and plausible explanation for his presence in the Hotel room. However, the fundamental issue remains that from him neither was there any recovery of any of the money alleged to be given as bribe nor there is any allegation of his role in either the demand of bribe or the payment of such bribe and only because of his presence in the room from which co-accused Manoj Kumar was caught and from his possession Rs. 25,000/-, which were marked, having been recovered, is a too far-fetched theory to connect the petitioner with the allegation under the Act.

9. In this connection it would be useful to refer to the decision of the Hon'ble Supreme Court in the case of **Anand Kumar Mohatta** (supra), especially paragraphs no. 15, 16, 17 and 26 which read as under:

"15. First, we would like to deal with the submission of the learned Senior Counsel for the



Respondent No. 2 that once the charge sheet is filed, petition for quashing of FIR is untenable. We do not see any merit in this submission, keeping in mind the position of this Court in Joseph Salvaraj A. v. State of Gujarat. In the case of Joseph Salvaraj A. (supra), this Court while deciding the question whether the High Court could entertain the 482 petition for quashing of FIR, when the charge sheet was filed by the police during the pendency of the 482 petition, observed:-

“16. Thus, from the general conspectus of the various sections under which the appellant is being charged and is to be prosecuted would show that the same are not made out even prima facie from the complainant’s FIR. Even if the charge-sheet had been filed, the learned Single Judge could have still examined whether the offences alleged to have been committed by the appellant were prima facie made out from the complainant’s FIR, charge-sheet, documents, etc. or not.”

16. Even otherwise it must be remembered that the provision invoked by the accused before the High Court is Section 482 Cr. P.C and that this Court is hearing an appeal from an order under Section 482 of Cr.P.C. Section 482 of Cr.P.C reads as follows:-

“482. Saving of inherent power of the High Court.- Nothing in this Code shall be deemed to limit or affect the inherent powers of the High Court to make such orders 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.”

17. There is nothing in the words of this Section which restricts the exercise of the power of the Court to prevent the abuse of process of Court or miscarriage of justice only to the stage of the FIR. It is settled principle of law that the High Court can exercise jurisdiction under Section 482 of Cr.P.C. even when the



discharge application is pending with the trial Court. Indeed it would be a travesty to hold that proceedings initiated against a person can be interfered with at the stage of FIR but not if it has advanced, and the allegations have materialized into a charge sheet. On the contrary it could be said that the abuse of process caused by FIR stands aggravated if the FIR has taken the form of a charge sheet after investigation. The power is undoubtedly conferred to prevent abuse of process of power of any court.”

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26. In *State of Haryana and Ors. v. Bhajan Lal and Ors.*, this Court has set out the categories of cases in which the inherent power under Section 482 of Cr.P.C. can be exercised. Para 102 of the judgment reads as follows:

“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 exercise.

(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.”



10. In the present case the Court finds that the present case comes under the 1st, 3rd and 6th category set out in paragraph no. 102 of the judgment in the case of **Bhajan Lal**, as quoted in paragraph no. 26 of the aforesaid judgment.

11. Accordingly, the application is allowed. The order taking cognizance dated 16.11.2011 passed in Darbhanga Town P.S. Case No. 86 of 2011/Special Case No. 8 of 2011 under Sections 7, 8, 13(2) read with 13 (1) (d) of the Act, as against the petitioner, stands quashed.

(Ahsanuddin Amanullah, J.)

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