IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No. 47499 of 2014

Arising Out of P.S. Case No.-341 Year-2014 Thana- BARH District- Patna

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1. Raj Kumar Gupta, Son of Sri Babu Lal Gupta.
2. Harish Kumar Gupta, Son of Late Shyam Sunder Gupta.
   Both resident of 54/4 Om Bhawan, Strand Road, Posta Bazar, P.S. Bara Bazar, Kolkata, District- Kolkata, West Bengal.
3. Ratan Kumar Shah @ Ratan Kumar, Son of Panna Lal Sah, Proprietor of M/s. Kirti Udyog, resident of 13, Gorapada Sarkar Lane, P.S. Ulta Danga, District Kolkata (West Bengal).

... ... Petitioner/s

Versus

1. The State of Bihar
2. Surendra Prasad, Son of Late Ram Chandra Sao, resident of Salempur, Gola Road, Dalpatti, Barh, P.S. Barh, District Patna.

... ... Opposite Party/s

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Appearance :

For the Petitioner/s	:	Mr. Sandeep Kumar, Mr. Alok Kumar Shahi, Mr. Abhishek Kumar and Mr. Rohit Raj, Advocates
For the Opposite Party/s	:	Mr. Surendra Kumar Singh, Ms. Sudha Chandra and Ms. Tulika Singh, Advocates
For the State	:	Mr. Jharkhandi Upadhyay, A.P.P.

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CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH

ORAL JUDGMENT

Date : 20-02-2019

Heard learned counsel for the petitioners; State and opposite party no. 2.

2. The petitioners have 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 of Barh P.S. Case No. 341/14 registered under Section 406, 420, 409, 506, 468, 471,120B of IPC."*

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3. The allegation against the petitioners is that they had taken Rs. 50,000/- cash from the opposite party no. 2 for supply of Masoor Dal which was never sent and when the opposite party no. 2 sent a witness to the petitioners demanding his money back, he was abused and turned out.

4. Learned counsel for the petitioners submitted that the present case is a purely civil dispute for which the criminal proceeding should not be allowed to proceed. It was submitted that even otherwise on merit, the petitioner no. 1 has filed case against the opposite party no. 2, and his sons in Calcutta alleging that they had taken delivery of *Masoor Dal* without making payment. Learned counsel submitted that the said cases were filed in July, 2013 and the present case has been filed on 13.08.2014, which was converted into an F.I.R. on 04.09.2014 and the same is counter blast to the case filed by the petitioner no. 3 against the opposite party no. 2 and his sons in West Bengal.

5. Learned A.P.P. submitted that the present case has been filed for quashing of the F.I.R., but cognizance has been taken and, thus, the matter has become infructuous.

6. Learned counsel for the opposite party no. 2 submitted that in the complaint filed by the petitioners in the State of West Bengal, the police after investigation has submitted Final

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Form not finding merit in the allegation. It was further submitted that even the petitioners have filed various cases against the opposite party no. 2 making similar allegations.

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. From the plain reading of the compliant, it is clear that the only allegation is that Rs. 50,000/- cash was taken by the petitioners and neither returned nor supply made to them with the cosmetic addition that when a witness sent by the opposite party no. 2 to the petitioners asking them either to repay the money or to send the goods, was abused and turned out. The Court, thus, finds that it is a purely civil dispute since, even if the allegation that for Rs. 50,000/- cash given, for which a receipt was granted to him, the only mode of recovery is through the Civil Court of competent jurisdiction in a money suit. Moreover, the mere reference that a witness of opposite party no. 2 was abused and turned out of the house, in the considered opinion of the Court, does not justify a full fledged criminal proceeding and trial. As far as the objection of the learned A.P.P. that the matter has become infructuous as it has been filed for quashing of the F.I.R. and now cognizance has been taken, the same is being noted for the sake of rejecting the same.

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Law is well settled that inherent power Section 482 of the Code, is for preventing the abuse of the process of the Court and to secure the ends of justice, at any stage. This position has been reiterated by the Hon'ble Supreme Court in **Anand Kumar Mohatta vs. State (Govt. of NCT of Delhi)** reported as **2019(1) BLJ SC 129**, where at paragraphs no. 15, 16 and 17 it has been held 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:-*
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> > *"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."*
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> *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:-*
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> > *"**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*

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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."

8. In **Indian Oil Corpn. v. NEPC India Ltd.** reported as **2006(6) SCC 736**, the Hon'ble Supreme Court has been held that purely civil dispute between the parties should not be allowed to be turned into criminal proceeding, the relevant being at paragraph no. 13, which reads as under:

"13. …….. Any effort to settle civil disputes and claims, which do not involve any criminal offence, by applying pressure through criminal prosecution should be deprecated and discouraged……"

9. Moreover, the Court finds that the case is also covered by the decision of the Hon'ble Supreme Court in **State of Haryana vs. Bhajan Lal** reported as **1992 Supp (1) SCC 335**,

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where at paragraph no. 102, categories have been enumerated where the Court would 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 serious 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 kind of cases wherein such power should be exercised.*
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> > *(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.*

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> *(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.*
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> *(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. The present case in the opinion of the Court is covered under category-7 of the aforesaid decision of the Hon'ble Supreme Court in **Bhajan Lal** (supra) at paragraph no. 102.

11. In the aforesaid background, the Court finds that the present criminal proceeding is untenable having been filed for oblique reasons and to harass the petitioners.

12. Accordingly, the application is allowed. The entire criminal proceeding arising out of Barh P.S. Case No. 341 of 2014 and all subsequent orders which may have been passed in the proceeding stand quashed.

13. Needless to say that as and when the opposite party no. 2 moves before the appropriate forum for seeking relief in

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cases filed by the petitioners against him, on the ground that the allegations by the petitioners against him discloses purely civil cause of action, the same shall be considered on its own merits.

(Ahsanuddin Amanullah, J.)

P. Kumar

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