

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No. 5598 of 2015

Arising Out of Complaint Case No.-590 Year-2008 Thana- BHAGALPUR COMPLAINT
CASE District- Bhagalpur

Md. Noor Alam, Son of Late Maulavi Md. Mobiuddin, Resident of Mohalla -
Kazipura, Ward No. 3, Police Station - Kahalgaon, District - Bhagalpur.

... .. Petitioner/s

Versus

1. The State of Bihar
2. Bipin Kumar, District Magistrate, Bhagalpur.
3. Jitendra Singh Gangwar, Superintendent of Police, Bhagalpur.
4. Satyendra Nath Srivastav, S.D.O., Bhagalpur.
5. Ram Anugrah Narayan Singh, Magistrate, Bhagalpur.
6. Virendra Narayan Jha, Deputy Superintendent of Police, Kahalgaon,
Bhagalpur.
7. Ajay Kumar Mishra, Officer-in-Charge, Kahalgaon.
8. V. Mukharjee, G.M., N.T.P.C., Kahalgaon.

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr. Radhey Shyam Sharma, Mr. Sunil Kumar and Mrs. Smita Bharti, Advocates
For the Opposite Party/s :		Mr. Anjani Kumar, A.A.G. 4
For the State	:	Mr. Jharkhandi Upadhyay, A.P.P.

CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN
AMANULLAH

ORAL JUDGMENT

Date : 28-02-2019



Heard Mr. Radhey Shyam Sharma, learned counsel for the petitioner and Mr. Anjani Kumar, learned AAG-4 along with Mr. Jharkhandi Upadhyay, learned A.P.P., for the State.

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 petition is for setting aside the order dated the 25th July 2014 passed by the Learned C.J.M., Bhagalpur in Complaint Case no. 590 of 2008 by which the petitioners case has been dismissed u/s 203 of the Cr.P.C.”

3. The issue relates to an incident of 18.01.2008 in the city of Kahalgaon in the district of Bhagalpur which led to police firing resulting in death of two persons. As per the allegation in the complaint, the then District Magistrate, Bhagalpur; the then Superintendent of Police, Bhagalpur and the General Manager of N.T.P.C., Kahalgaon were at the place of occurrence and had ordered for shooting, on which the Superintendent of Police is alleged to have shot one Subul in the head and when Basudeo Paswan came to his rescue, the Superintendent of Police, Bhagalpur also shot at him which hit him in the hand. It was further alleged that the complainant- petitioner, tried to run, upon which the District Magistrate ordered the Superintendent of Police to shoot and the same was done which hit him in the thigh. It was



alleged that second shot was also fired at him which scraped his right hand. It has further been stated that the accused persons left the place with three dead bodies. The petitioner alleged that he was treated at a private nursing home and was also given Rs. 10,000/- compensation by the State Government for the treatment of injury suffered by him in the incident.

4. Learned counsel for the petitioner submitted that after enquiry under Section 202 of the Code, the Court below had dismissed the complaint under Section 203 of the Code by order dated 25.07.2014, which is totally erroneous. It was submitted that primarily three grounds for dismissal have been taken. Learned counsel submitted that the first ground is that the statement of one of the witnesses namely Basudeo Paswan in a different complaint case i.e., Complaint Case No. 516 of 2008, has been taken note of, which is not permissible as every complaint case has to be treated separately on its own merits without being influenced by what has been stated in another complaint case. Learned counsel submitted that the second ground taken is lack of sanction under Section 197 of the Code. It was submitted that the same is also not tenable for the reason that law does not give protection for illegal acts, which are not done in the performance of official duty. It was submitted that in the present case, opening fire without



provocation on innocent citizens can in no way be said to be an act in official capacity, which only is protected under Section 197 of the Code. Thus, learned counsel submitted that in the present facts of the case such sanction was not required, as it was purely a criminal act on the part of the accused who had connived together and had shot the deceased, and the petitioner was also injured from gun shot fired by one of the accused. Learned counsel submitted that the third ground taken by the Court below is that the Complaint Case No. 516 of 2008 filed by Basudeo Paswan had been dismissed under Section 203 of the Code and, thus, the present complaint case also deserves to be dismissed and the same has been done. Learned counsel submitted that the Court has also taken the point that all complaint witnesses were required to be examined and because the same was not done, cognizance could not be taken. He submitted that the same is not what the law requires. In this connection, he relied upon a decision of the Hon'ble Supreme Court in **Shivjee Singh v. Nagendra Tiwary** reported as **(2010) 7 SCC 578**, in which it has been held that only those witnesses are required to be examined whom the complainant considers material to make out *prima facie* case for issue of process. It was submitted that consequence of non examination was to be considered at the stage of trial and not at



the stage of issuing process, when the Magistrate is not required to enter into detailed discussions on merits of the case and he has to see whether there exists sufficient ground for proceeding against the accused. Learned counsel submitted that such dismissal of complaint case is not permissible in law as the Court is supposed to look into the materials before it and which come during inquiry under Section 202 and not what has happened in a different complaint case. It was further submitted that even the defence of the accused cannot be considered by the Court at the time of taking cognizance. Learned counsel submitted that the Court below has also erred on facts inasmuch as it has held that no injured witness has been examined despite the fact that the petitioner, who himself was injured, did get his evidence recorded.

5. Learned A.A.G. 4, appearing on behalf of the State, submitted that first and foremost, the entire issue can be said to be governed by the protection to the accused, who are public servants, by Section 197 of the Code. It was submitted that if there is a direct nexus between the act alleged and the discharge of official duty, it is incumbent upon the Court to ensure compliance of the requirement of Section 197, which provides for the State Government to accord sanction before any Court takes cognizance against any public servant. In this connection, he relied upon the



decision of the Hon'ble Supreme Court in **Sankaran Moitra v. Sadhna Das** reported as **(2006) 4 SCC 584**, the relevant being at paragraphs no. 5, 7, 9, 11, 16, 22 and 25. Similarly reliance was placed on a Full Bench judgment of this Court in **Ram Rekha Pandey vs. State of Bihar** reported as **2016(3) PLJR 296**, the relevant being at paragraphs no. 11, 12, 14, 16 and 18. Reliance was also placed on the judgment of a co-ordinate Bench in **Sanjay Kumar Thakur vs. State of Bihar** reported as **2016(1) PLJR 19**, the relevant being at paragraphs no. 2, 3, 7, 8, 17, 26 and 27.

6. Learned counsel submitted that on facts, the contention of learned counsel for the petitioner that the Court could not have taken note of Complaint Case No. 516 of 2008 in the present case, is totally misplaced and in fact, such point is not available to the petitioner. He submitted that in the complaint case, it was only the petitioner, in the capacity of complainant, who was examined and the other witness was Basudeo Paswan who was the complainant of Complaint Case No. 516 of 2008. It was submitted that it was the petitioner who had filed the deposition of Basudeo Paswan in Complaint Case No. 516 of 2008 and had referred to the other complaint case and, thus, such material was provided to the Court by the complainant himself and therefore, the objection taken that the Court could not have referred to the other complaint



case is both against the stand taken by the complainant himself before the Court below, where he produced materials relating to Complaint Case No. 516 of 2008, as well as getting the evidence of the other witness recorded, who was the complainant of the other complaint case. Further, it was submitted that Complaint Case No. 516 of 2008 was also in relation to the same incident and, thus, in any view of the matter, was relevant material for the Court to take note of. Learned counsel submitted that the said complaint case was dismissed by the Court below itself under Section 203 of the Code by order dated 03.05.2012 by a detailed and well discussed order, both on facts as well as in law. Learned counsel submitted that thus, when the Court had before it a well-reasoned order passed relating to the same incident and based on identical facts, it is permissible in law to take note of such fact, especially when the complainant himself makes the Court aware of the same and produces materials relating to the said case. Learned counsel submitted that ultimately the requirement of law is to arrive at the truth and to ensure that justice prevails and for this reliance on materials which are official Court records and directly relevant to a particular set of facts, cannot be said to be extraneous. Learned counsel submitted that the challenge by Basudeo Paswan to such dismissal of Complaint Case No. 516 of



2008 before this Court in Cr. Misc. No. 24696 of 2012 also resulted in dismissal of the application by a co-ordinate Bench by order dated 03.10.2013. Learned counsel drew the attention of the Court to the order contending that it had discussed the entire factual background leading to the incident and the filing of the complaint case and had ultimately held that the accused were protected under Section 197 of the Code and also that the act alleged against the accused had a reasonable connection with the discharge of their duty and, thus, they were entitled to such protection. Learned counsel submitted that the High Court has further held that in the particular facts and circumstances of the case, the accused were entitled to protection under Sections 197 and 132 of the Code and accordingly had rejected the challenge by Basudeo Paswan against the dismissal of Complaint Case No. 516 of 2008.

7. Learned counsel submitted that the fact is that 'Kahalgaon Nagrik Sangharsh Samiti' was making demands for uninterrupted electric supply for 24 hours and there was a tripartite meeting, but no consensus could be arrived at and thereafter ultimatum was given by the organization to block the road and functioning of N.T.P.C. and other government offices which prompted the Sub-Divisional Officer, Kahalgaon to issue



prohibitory orders under Section 144 of the Code on 17.01.2008 by which the people were asked not to assemble in groups beyond five with any weapon and to maintain peace. It was further submitted that at many places violence took place for which Kahalgaon P.S. Cases No. 12 of 2008, 13 of 2008, 14 of 2008, 15 of 2008, 16 of 2008 and 18 of 2008 were instituted. It was submitted that in the incidents, 34 officials, including Magistrates, Government Officials, Police Officials and Police Constables were injured and extensive damage to property was also caused by the protesters. It was submitted that with regard to the incident which had taken place on 18.01.2008, which is also the subject matter of the present complaint, on the written report of the Officer In-charge of Kahalgaon P.S., Kahalgaon P.S. Case No. 13 of 2008 dated 18.01.2008 was instituted under Sections 147, 148, 149, 150, 152, 153, 323, 341, 307, 332, 333, 337, 338, 353, 227/431 of the Indian Penal Code and 27 of the Arms Act, in which the prosecution story was that in the protest against supply of electricity in different parts of Kahalgaon, protesters had jammed the road leading to great difficulty to pregnant ladies, ailing persons and the officials visiting their respective offices and further, the Moharram procession from village Mahinsa Munda was not being allowed to proceed which was leading to communal



tension and on account thereof, requisition was made for additional police officials and force and the same arrived from different police stations of the sub-division and the civil and police officials also reached near Railway Station Chowk, Kahalgaon by which time about 1500 protesters were raising violent slogans and despite best efforts made to persuade them to disperse, by the officials, they started pelting stones on the police and officers endangering their life, due to which the Sub Divisional Officer, Kahalgaon, in order to control the situation, ordered *lathi* charge, due to which the protesters became violent and the stone-pelting increased and many police constables were injured. It was submitted that by then the Additional Collector and other officials had arrived at about 4.30 P.M. and the Sub Divisional Officer, Kahalgaon directed for use of tear gas but the same could also not control the crowd which surrounded the police and Executive Officers and in fact, two constables were abducted by the mob and when the police went ahead to get the two constables freed from the mob, there was firing from the side of the mob which became more violent leaving the administration with no option and the Sub-Divisional Officer, Kahalgaon ordered firing at about 5.10 P.M. due to which two protesters fell down, who were taken away by the protesters, out of which one died on



the way to the hospital and the other was treated at Mayaganj Hospital, Bhagalpur. It was submitted that even the Sub-Divisional Officer, Kahalgaon; Inspector of Police; the Executive Magistrate; the Block Development Officer and many constables were injured. Learned counsel submitted that even the petitioner was examined and his statement was recorded at paragraph no. 58 of the case diary on 24.01.2008, in which he has stated that on 18.08.2008 at 4.00 P.M. he was going to the vegetable market when firing took place and the Sub-Divisional Officer and the Deputy Superintendent of Police were present and he had sustained gun shot injury in right thigh and right hand elbow and due to fear, he did not go to the police station on the next day and on the advise of higher officials he had filed an application, on the basis of which his statement was recorded. It was submitted that in the application of the petitioner no such allegation, as made in the complaint, has been written and only a general statement of sustaining injury had been made. It was submitted that after investigation charge sheet was submitted on 26.10.2011. Learned counsel submitted that once the sequence of events have been narrated in a natural manner, which clearly shows that there was a mob which became violent and was not obeying the plea to disperse peacefully and had in fact become belligerent and due to



pelting stone and also abducting two police constables, the administration, after resorting to *lathi* charge and tear gas, was compelled to order for firing which was also resorted, as per the requirement of law, under the order of the Sub-Divisional Officer, Kahalgaon, who has not denied the same; the version in the complaint case, besides becoming doubtful, is also not believable. Learned counsel submitted that in the present case, the petitioner, who is the complainant, had himself sent a written report to the police the next day in which he has not stated or made any allegation, as he has done in the complaint case, which has been filed after three months of the incident. Learned counsel submitted that no prudent or reasonable person would believe that the District Magistrate and the Superintendent of Police of a District would themselves open fire when the entire police force was there and when the Sub-Divisional Officer had already given orders, initially for *lathi* charge followed by tear gas and at last for firing. Learned counsel submitted that even the allegation that the General Manager of N.T.P.C. ordered the Superintendent of Police to fire and he complied with the order is not only totally unbelievable but also absurd, as the General Manager is not the superior officer or even an officer of a rank who can order any police officer or even a constable to open fire. Learned counsel



submitted that a comparison of the complaint of Basudeo Paswan and of the petitioner would reveal that both are almost identical and the format also is more or less identical. It was submitted that both complaint cases, thus, appear to have been filed as a late reaction and in fact are proxy proceedings for oblique reasons and by people who had a score to settle with the local administration, for political reasons and who do not want to come in the open and show their faces. Learned counsel submitted that once the identical complaint of Basudeo Paswan has been dismissed by a well reasoned order and challenge to the same also dismissed by the High Court by a well reasoned order and the same Basudeo Paswan also deposing in the present complaint case, along with the petitioner, and the Court taking note of such fact as well as the dismissal of Complaint Case No. 516 of 2008, more so when such facts were brought before the Court by the complainant himself, such consideration/reliance/reference cannot be said to be extraneous or beyond jurisdiction and in fact has been rightly taken note of, which has enabled the Court to do justice in the matter. Learned counsel submitted that for the said incident, the State Government itself had constituted a Judicial Commission under the chairmanship of a retired Hon'ble Judge of this Court by Notification dated 08.02.2008 which, after holding a full fledged



inquiry had arrived at the conclusion that the firing made by the police was warranted and necessary to prevent damage to public property and ensure safety of Government personnel and the public at large. It was submitted that in terms of the findings of the Judicial Commission, the State Government after accepting the report, had also exonerated and reinstated the police and administrative officers, who were earlier placed under suspension in connection with such police firing, especially, the Sub-Divisional Officer, Kahalgaon and the Sub-Divisional Police Officer, Kahalgaon.

8. Learned counsel summed up his argument by submitting that the matter has been looked into both by the police in its investigation as well as by an independent Judicial Commission headed by a retired High Court Judge and the police firing has been found to be justified and most importantly, there is no controversy with regard to the Sub-Divisional Officer, Kahalgaon having ordered the firing and thus, the allegation against the accused in the present case of having ordered for firing and also firing, stands totally falsified. It was submitted that the entire incident happened due to the mob becoming unruly and not responding to any of the pleas by the administrative officials and as a last resort, after first *lathi* charge and then tear gas, and



further, that there was absolutely no reason or occasion for the officials, who are alleged in the complaint to have directed for or resorted to firing, to do so. It was submitted that when the entire police force with arms was present and as per the requirement of law, the competent authority, after initially directing for *lathi* charge, followed by tear gas had lastly ordered for firing, there was absolutely no occasion for the senior officers to themselves start firing.

9. Having considered the facts and circumstances of the case and submissions of learned counsel for the parties, the Court does not find any merit in the present application. The ground on which the complaint case has been dismissed by the Court below appears to be sound and reasonable, both on facts as well as in law. The objection taken by learned counsel for the petitioner that reference to Complaint Case No. 516 of 2008 is totally impermissible, in the considered opinion of this Court, is unsustainable. It was the petitioner himself, who is the complainant, and had brought such material before the Court by filing the deposition of Basudeo Paswan in Complaint Case No. 516 of 2008 and had also made him a complaint witness, and who was also examined by the Court. Thus, when materials relating to Complaint Case No. 516 of 2008 were brought before the Court



by the complainant himself, there cannot be any question of the Court being precluded from referring to the said complaint case in deciding the present issue, which was also relevant as it related to the same very incident. Moreover, the dismissal of Complaint Case No. 516 of 2008 itself was by a detailed and reasoned order covering both the factual and legal aspects which this Court has also gone through. Without commenting on the same, as already a co-ordinate Bench has upheld the order, the Court would only observe that the same is well-considered and gives sufficient reason why Complaint Case No. 516 of 2008 had been dismissed. In the present case also, the Court has rightly relied upon the dismissal of an identical complaint case, that too brought to the notice of the Court by the complainant himself, and also which was filed by the other complaint witness namely, Basudeo Paswan. Further, the Court has also rightly taken the point of lack of sanction as required under Section 197 of the Code. In the opinion of this Court, there cannot be any iota of confusion or doubt with regard to the fact that the act alleged against the accused was integrally and inseparably connected with the discharge of their official duty. It is not in dispute that there was a mob and that district civil and police officials were present at the spot. Further, it is also not in controversy or dispute that firing



was resorted to by the police. Thus, the object of getting the mob to disperse, clearing the road and also of maintaining public law and order being vested with the district officials and they in furtherance of the same having discharged their duty by ordering for *lathi* charge, followed by tear gas and finally firing, cannot be said to have done anything which was not in the official capacity or in the discharge of their official duties. It is not a case where the officials did not have the power or capacity under law to direct firing. Once the power is vested in the officials, the exercise of such power in furtherance of the object of restoring law and order and maintaining peace is directly related to such discharge of their official duty of ensuring public order and tranquility. Thus, the Court below has rightly taken the plea of requirement of Section 197 of the Code not being complied as no sanction has been accorded by the State Government. Further, the Court would observe that the plea of learned counsel for the petitioner that the matter be remanded for fresh consideration is noted only for the sake of rejecting the same. When this Court, both on facts as well as in law has come to the finding that the complaint case lacks *bona fide* and merits, both factually as well as in law, there is no occasion for it to remand the matter once again to the Court below for an exercise in futility.



10. The Court deems it appropriate to refer to the judgment of the Hon'ble Supreme Court in the case of **State of Karnataka v. L. Muniswamy** reported as (1977) 2 SCC 699, where at paragraph no. 7, the following has been observed:

“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. Moreover, the Hon'ble Supreme Court in the case of **State of Haryana vs. Bhajan Lal** reported as 1992 Supp (1) SCC 335, at paragraph no. 102 has enumerated categories where the Court ought to exercise its 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.”

12. The present case, in the opinion of the Court is covered under categories 6 and 7 of the decision of the Hon’ble Supreme Court in **Bhajan Lal** (supra) at paragraph no. 102.

13. Similarly, the Hon’ble Supreme Court in **State of Karnataka v. M. Devendrappa** reported as **2002(3) SCC 89** while considering the ambit of Section 482 of the Code, has held at paragraphs no. 6 and 8 as under:

“6. Exercise of power under Section 482 of the Code in a case of this nature is the exception and not the rule. The section does not confer any new powers on the High Court. It only saves the inherent power which the Court possessed before the enactment of the Code. It envisages three circumstances under which the inherent jurisdiction may be exercised, namely, (i) to give effect to an order under the Code, (ii) to prevent abuse of process of Court, and (iii) to otherwise secure the ends of justice. It is neither possible nor desirable to lay down any inflexible rule which would govern the exercise of inherent jurisdiction. No legislative enactment dealing with procedure can provide for all cases that may possibly arise. Courts, therefore, have inherent powers apart from express provisions of law which are necessary for proper discharge of functions and duties imposed upon them by law. That is the doctrine which finds expression in the section which merely recognizes and preserves



inherent powers of the High Courts. All Courts, whether civil or criminal possess, in the absence of any express provision, as inherent in their constitution, all such powers as are necessary to do the right and to undo a wrong in course of administration of justice on the principle "quande lex aliquid aliqui concedit, concedere videtur et id sine quo res ipsa, esse non potest" (when the law gives a person anything it gives him that without which it cannot exist). While exercising powers under the Section, the Court does not function as a Court of appeal or revision. Inherent jurisdiction under the section though wide has to be exercised sparingly, carefully and with caution and only when such exercise is justified by the tests specifically laid down in the Section itself. It is to be exercised ex debito justitiae to do real and substantial justice for the administration of which alone Courts exist. Authority of the Court exists for advancement of justice and if any attempt is made to abuse that authority so as to produce injustice, the Court has power to prevent abuse. It would be an abuse of process of Court to allow any action which would result in injustice and prevent promotion of justice. In exercise of the powers Court would be justified to quash any proceeding if it finds that initiation/continuance of it amounts to abuse of process of Court or quashing of these proceedings would otherwise serve the ends of justice. When no offence is disclosed by the complaint, the Court may examine the question of fact. When a complaint is sought to be quashed, it is permissible to look into the materials to assess what the complainant has alleged and whether any offence is made out even if the allegations are accepted in toto.

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8. In dealing with the last case, it is important to bear in mind the distinction between a case where there is no legal evidence or where there



is evidence which is clearly inconsistent with the accusations made, and a case where there is legal evidence which, on appreciation, may or may not support the accusations. When exercising jurisdiction under Section 482 of the Code, the High Court would not ordinarily embark upon an enquiry whether the evidence in question is reliable or not or whether on a reasonable appreciation of it accusation would not be sustained. That is function of the trial Judge. Judicial process should not be an instrument of oppression, or, needless harassment. Court should be circumspect and judicious in exercising discretion and should take all relevant facts and circumstances into consideration before issuing process, lest it would be an instrument in the hands of a private complainant to unleash vendetta to harass any person needlessly. At the same time the section is not an instrument handed over to an accused to short-circuit a prosecution and bring about its sudden death. The scope of exercise of power under Section 482 of the Code and the categories of cases where the High Court may exercise its power under it relating to cognizable offences to prevent abuse of process of any Court or otherwise to secure the ends of justice were set out in some detail by this Court in State of Haryana v. Bhajan Lal. A note of caution was, however, added that the power should be exercised sparingly and that too in rarest of rare cases.....”

14. The Court would also refer to the decision of the Hon’ble Supreme Court in **Vineet Kumar v. State of U.P.** reported as **AIR 2017 SC 1884**, where at paragraph no. 39, it has been held as under:

“39. Inherent power given to the High Court under Section 482 Cr.P.C. is with the purpose and object of



advancement of justice. In case solemn process of Court is sought to be abused by a person with some oblique motive, the Court has to thwart the attempt at the very threshold. The Court cannot permit a prosecution to go on if the case falls in one of the Categories as illustratively enumerated by this Court in State of Haryana v. Bhajan Lal. Judicial process is a solemn proceeding which cannot be allowed to be converted into an instrument of operation or harassment. When there are material to indicate that a criminal proceeding is manifestly attended with mala fide and proceeding is maliciously instituted with an ulterior motive, the High Court will not hesitate in exercise of its jurisdiction under Section 482 Cr.P.C. to quash the proceeding under Category 7 as enumerated in State of Haryana v. Bhajan Lal, which is to the following effect:

“(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.”

Above Category 7 is clearly attracted in the facts of the present case. Although, the High Court has noted the judgment of the State of Haryana v. Bhajan Lal, but did not advert to the relevant facts of the present case, materials on which Final Report was submitted by the I.O. We, thus, are fully satisfied that the present is a fit case where High Court ought to have exercised its jurisdiction under Section 482 Cr. P.C. and quashed the criminal proceedings.”



15. In the aforesaid background, the Court finds that the complaint case is *mala fide*, untenable and solely intended to harass the accused.

16. For reasons aforesaid, the application stands dismissed.

(Ahsanuddin Amanullah, J.)

P. Kumar

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