

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.27253 of 2012

Arising Out of PS. Case No.-247 Year-2012 Thana- KHAZANCHI HAT District- Purnia

=====

Pashupati Bagchi aged about 68 years, son of late Bmala Kant Bagchi,
resident of Mohalla Jhanda Chowk, Bhattha Bazar, P.S. K. Hat, District
Purnea

... .. Petitioner/s

Versus

1. The State Of Bihar
2. Naresh Ali, son of Sikandar Ali, resident of Village Prabhanand Pur, P.S.
Sadar Muffasil, Ran Patra, District Purnea.

... .. Opposite Party/s

=====

Appearance :

For the Petitioner/s	:	Mr. Anand Kumar Ojha with Mr. A. K. Karna and Mr. Ashok Kumar, Advocates
For the State	:	Mr. Jharkhandi Upadhyay, APP
For the O. P. No. 2	:	Mr. J. P. Bhagat with Mr. Bijendra Kumar Singh, Advocates

=====

CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH

ORAL JUDGMENT

Date : 10-01-2019

Heard learned counsel for the petitioner; learned A.P.P.
for the State and learned counsel for the opposite party no. 2.

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 instant application is being filed for
quashing the entire Criminal Proceeding
arising out of K. Hat P.S. Case No. 247/2012*



dated 04.05.2012 under section 420, 467, 468, 415, 471 IPC lodged by the O.P. No. -2 in abuse of the process of court in as much as that despite totally civil nature of allegation the criminal prosecution has been chosen with malicious intention and to cause harassment to the innocent Petitioner even though on the similar allegation against the Petitioner the police had already submitted final report declaring such allegations to be matter of civil dispute.”

3. The allegation against the petitioner and two others is that the petitioner showing himself to be the nephew of the recorded tenant had sold lands to the other two co-accused.

4. Learned counsel for the petitioner submitted that from the entire reading of the complaint case, it would be apparent that the matter is of a purely civil nature since there is dispute as to whether the petitioner had the right to sell the lands in question. Learned counsel submitted that the criminal case instituted is a blatant abuse of the process of the court. Learned counsel submitted that earlier also, the petitioner had filed a Complaint Case No. 207 of 2012 which was later on converted into Khazanchi Hat P.S. Case No. 70 of 2012 in which the police have submitted final form holding that the matter related to a civil dispute. Learned counsel submitted that in the present case, the petitioner has not stated as to whether he went to the police for lodging the complaint and if the same was refused whether he had



sent his complaint to the concerned Superintendent of Police as has now been held by the courts to be necessary before the Court proceeds with the complaint case and further that it has not been affidavitated. It was submitted that it has been held that there has to be evidence to show that the complaint was forwarded to the concerned district police and further the complaint has to be affidavitated so as to hold the complainant accountable in case if it is found that the same was incorrect. For such proposition, learned counsel relied upon the decision of the Hon'ble Supreme Court in the case of **Priyanka Srivastava v. State of U.P.** reported as **(2015) 6 Supreme Court Cases 287**, the relevant being at paragraph no. 31. Learned counsel further submitted that it is a peculiar case as the opposite party no. 2 has himself prayed in the complaint case for the Court to send the matter to the police for registering F.I.R. under Section 153 (3) of the Code. It was submitted that such is not in the discretion of the complainant as it is for the Court to decide as to whether it would itself proceed with the enquiry or send the matter to the local police for investigation. Learned counsel further submitted that the Court passing a cryptic order of forwarding the complaint to the S.H.O. of the concerned police station for institution of F.I.R. under Section 153(3) of the Code is also not proper, inasmuch as, the law has been settled that



the Court has to apply its judicial mind and then only take a conscious decision as to whether it would itself proceed with the enquiry or send it to the police for investigation or even dismiss the complaint petition at the initial stage itself if no criminal offence is made out. Learned counsel submitted that in any view of the matter, the question as to whether the petitioner had the right and title to transfer/sell the lands in question cannot be a subject matter of a criminal proceeding and the same has to be adjudicated and thrashed out before a civil court of competent jurisdiction.

5. Learned A.P.P. submitted that in view of a similar matter in which the petitioner was also made accused and which was filed by the opposite party no. 2, the police had rightly submitted a final form treating it to be a case of civil dispute.

6. Learned counsel for the opposite party no. 2 submitted that the petitioner had no right or title over the lands in question and, thus, could not have executed the sale deeds in favour of the other accused and this makes it a criminal offence on his part. However, on a specific question to learned counsel by the Court as to how the opposite party no. 2 could have made a prayer to the Court to send the matter to the police for registering F.I.R. and also as to how the matter of title can be decided in a criminal proceeding, learned counsel could not counter such objection.



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. The matter, as has rightly been submitted by the learned counsel for the petitioner, is of a purely civil nature for which there cannot be any criminal proceeding, which clearly would be an abuse of the process of the court. Moreover, the Court finds that the present case is covered by the decision of the Hon'ble Supreme Court in the case of **Indian Oil Corporation v. NEPC India Ltd.** reported as **(2006) 6 Supreme Court Cases 736**, where at paragraph no. 13 it has been held 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.....”

8. Further, 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 Supreme Court Cases 699** of which paragraph no. 7 reads 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 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. The ends of justice are higher than the, ends of mere law though justice has got to be administered according to laws made by the legislature. The compelling necessity for making these observations is that without a proper realisation of the object and purpose of the provision which seeks to save the inherent powers of the High Court to do justice between the State and its subjects it would be impossible to appreciate the width and contours of that salient jurisdiction.”

9. In this connection, the Hon’ble Supreme Court in the case of **Inder Mohan Goswami v. State of Uttaranchal** reported as **(2007) 12 Supreme Court Cases 1** has taken note of the fact that the power of the Court under Section 482 of Code is for advancement of justice and preventing abuse of the process of the Court. The relevant portion of the aforesaid judgment reads as under:

“13This court in a number of cases has laid down the scope and ambit of courts powers under section 482 Cr.P.C. Every High Court Patna High Court Cr. Misc. No.46181 of



2013 dt.19-07-2017 has inherent power to act ex debito justitiae to do real and substantial justice, for the administration of which alone it exists, or to prevent abuse of the process of the court. Inherent power under section 482 Cr.P.C. can be exercised:

- (i) to give effect to an order under the Code;*
- (ii) to prevent abuse of the process of court, and*
- (iii) to otherwise secure the ends of justice.*

Inherent powers under section 482 Cr.P.C. though wide have to be exercised sparingly, carefully and with great caution and only when such exercise is justified by the tests specifically laid down in this section itself. Authority of the court exists for the advancement of justice. If any abuse of the process leading to injustice is brought to the notice of the court, then the Court would be justified in preventing injustice by invoking inherent powers in absence of specific provisions in the Statute.”

10. Further, the Court would also refer to the decision of the Hon’ble Supreme Court in the case of **State of Haryana v. Bhajan Lal** reported as **1992 Supplementary (1) Supreme Court Cases 335** where at paragraph no. 102, categories have been enumerated where the Court should exercise inherent powers 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 clearly falls under category 7 of the aforesaid judgment in the case of **Bhajan Lal** (supra).

12. Further, the judgment of the Hon’ble Supreme Court in the case of **Priyanka Srivastava** (supra), especially paragraphs no. 29 to 31 being relevant are quoted hereinbelow:

“29 At this stage it is seemly to state that power under Section 156 (3) warrants application of judicial mind. A court of law is involved. It is not the police taking steps at the stage of Section 154 of the Code. A litigant at his own whim cannot invoke the authority of the Magistrate. A principled and really grieved citizen with clean hands must have free access to invoke the said power. It protects the citizens but when pervert litigations takes this route to harass their fellows citizens, efforts are to be made to scuttle and curb the same.

30. In our considered opinion, a stage has come in this country where Section 156 (3) Cr.P.C. applications are to be supported by an affidavit duly sworn by the applicant who seeks the invocation of the jurisdiction of the Magistrate. That apart, in an appropriate case, the learned Magistrate would be well advised to verify the truth and also can verify the veracity of the allegations. This affidavit can make the applicant more responsible. We are compelled to say so as such kind of applications are being filed in a routine manner without taking any responsibility whatsoever only to harass certain persons. That apart, it becomes more disturbing and alarming when one tries to pick up people who are passing orders under a statutory provision



which can be challenged under the framework of said Act or under Article 226 of the Constitution of India. But it cannot be done to take undue advantage in a criminal court as if somebody is determined to settle the scores.

31. We have already indicated that there has to be prior applications under Section 154(1) and 154 (3) while filing a petition under Section 156(3). Both the aspects should be clearly spelt out in the application and necessary documents to that effect shall be filed. The warrant for giving a direction that an the application under Section 156 (3) be supported by an affidavit so that the person making the application should be conscious and also endeavour to see that no false affidavit is made. It is because once an affidavit is found to be false, he will be liable for prosecution in accordance with law. This will deter him to casually invoke the authority of the Magistrate under Section 156 (3). That apart, we have already stated that the veracity of the same can also be verified by the learned Magistrate, regard being had to the nature of allegations of the case. We are compelled to say so as a number of cases pertaining to fiscal sphere, matrimonial dispute/family disputes, commercial offences, medical negligence cases, corruption cases and the cases where there is abnormal delay/laches in initiating criminal prosecution, as are illustrated in Lalita Kumari are being filed. That apart, the learned Magistrate would also be aware of the delay in lodging of the FIR.”

13. Having considered the aforesaid, the Court finds that the prosecution is *mala fide*, untenable and solely intended to harass the appellant.



14. Accordingly, the application is allowed. The entire criminal proceeding arising out of Khazanchi Hat P.S. Case No. 247 of 2012 dated 04.05.2012 stands quashed.

(Ahsanuddin Amanullah, J)

Anjani/-

AFR/NAFR	AFR
U	
T	

