

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.66352 of 2021

Arising Out of PS. Case No.-2008 Year-2019 Thana- BHAGALPUR COMPLAINT CASE
District- Bhagalpur

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R. S. Pandey, Son of Late Sri B B Pandey Deputy Chief Executive Officer
(SZ) Khadi and Resident of Village- Industries Commission, Bengaluru
(Karnataka).

... .. Petitioner/s

Versus

1. The State of Bihar
2. Rahmatullah Ansari @ Rahmatullah Son of Mohammad Abdul Rahman,
Resident of Village- Laxmi Narayan Singh Lane, Nath Nagar, P.s.- Nath
Nagar, Dist.- Bshagalpur (Bihar)

... .. Opposite Party/s

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Appearance :

For the Petitioner/s	:	Mr. Dhanendra Chaubey, Advocate
For the Opposite Party/s	:	Mr. Ram Naresh Ray, APP
For the O.P. No.2	:	Mr. Nafisuzzoha, Advocate
		Mr. Raju Prasad, Advocate

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CORAM: HONOURABLE MR. JUSTICE CHANDRA SHEKHAR JHA
ORAL ORDER

- 4 21-07-2022 **1.** Heard the parties.
- 2.** This application is being filed for quashing the
entire proceeding of Complaint Case No.2008 of 2019 in
which cognizance has been taken vide order dated
19.02.2021 by learned Judicial Magistrate 1st Class,
Bhagalpur, under Section 417 and 504 of the Indian Penal
Code.
- 3.** The allegation against the petitioner, as per the case
set out by the complainant is that the petitioner bought 19
saaris, worth of Rs. 1,04,500/- from his shop, which has



not been paid to the complainant.

4. It is submitted by learned counsel for the petitioner that on receipt of Complaint Case No. 2008 of 2019, learned Chief Judicial Magistrate transferred the case to the Court of Shri Shailesh Kumar Ram, learned Judicial Magistrate, 1st Class, Bhagalpur under Section 192 of the Cr.Pc. for inquiry and disposal, where complainant examined himself on solemn affirmation on 20.01.2020 in which he has affirmed the date of occurrence on 27.07.2019 at 05:00 o'clock evening and also told the price of each Sarees Rs. 5,500/-

5. It is also submitted by learned counsel for the petitioner that the complainant, thereafter, produced two Inquiry witnesses viz I.W. 1 Zahid Ansari and I.W. 2 Md. Nazir Ansari, who have recorded their statement on oath, where I.W.2 contradicting date of occurrence, as 28.07.2019. These two inquiry witnesses are none but the staff of the complainant, appears to be interested witness, discloses maximum of civil liabilities of petitioner, and no *prima-facie* case is made out under Section 417 and 504 of the Indian Penal Code.

6. It is further submitted by learned counsel for the



petitioner that the petitioner was Deputy Chief Executive (Khadi) Posted at Head Office, Mumbai of Khadi & Village Industries Commission (KVIC), in the year 2019 and at present, petitioner is Deputy Chief Executive Officer, South Zone Bangalore, which functions under the Ministry of Micro, Small and Medium Enterprises, Government of India, where as per settled norms any officials cannot leave the office without prior approval of its Higher Officer in hierarchy.

7. Learned counsel for petitioner further submitted that there was prefixed meeting on 30.07.2019 at 10:00 A.M. with District Magistrate, Bhagalpur in view of Ministry Letter No. F-12011/32/2019 KVI-II dated 10.06.2019 and to attend the said meeting this petitioner submitted its Tour Programmer on 24.07.2019 to the Chief Executive Officer, KVIC, Mumbai for approval, where, he had to leave the Mumbai on 27.07.2019 by Air and had to stay at Lucknow upto 29.07.2019 and thereafter he had to attend the Meeting on 30.07.2019 with the District Magistrate, Bhagalpur in presence of other officials of Government of Bihar and Khadi Board.

8. While travelling over the argument, it has further



been submitted that as per Tour Programme, petitioner left Mumbai by Air on 27.07.2019 and reached Lucknow on the same day and he stayed at Lucknow from 27.07.2019 to 29.07.2019. On 29.07.2019 he left Lucknow by Air for Patna and reached Patna on the same day.

9. It is also submitted by learned counsel for the petitioner that the complainant and his witnesses have cooked up a fabricated story of purchase of Silk Sarees by the petitioner on 27.07.2019 at 05:00 O'clock evening from Complainant at Bhagalpur only to defame the reputation of the Petitioner.

10. It is submitted by learned counsel for the petitioner that after reaching at Patna on 29.07.2019, petitioner along with two Officials of KVIC Bihar State Office left for Bhagalpur by Train on 29.07.2019, for attending meeting with District Magistrate, Bhagalpur on 30.07.2019 and after attending the pre-fixed meeting with the District Magistrate, Bhagalpur on 30.07.2019, this petitioner returned to Patna on the same day and reached Patna by Train on 30.07.2019.

11. It is submitted by learned counsel for the petitioner



that it is pertinent to mention here that according to complaint the alleged offence was done on 27.07.2019 at 05:00 P.M. in Nath Nagar, Bhagalpur, whereas the petitioner was, on the said date of occurrence at all not in the territory of Bihar State.

12. While concluding the argument, it has been submitted that complainant/O.P. No.2 associated with his two employees have unsuccessfully tried to damage the reputation of the Petitioner, with malafide intentions and ulterior motive, where, there is no iota of direct or indirect evidence, except the contradictory statements of the complainant and his witnesses and as such, it can be safely gathered that further proceeding will only abuse of process of law. Learned counsel further submits that petitioner has been impleaded in official capacity and therefore, under the provisions of Section 197 of the Cr.P.C., no Court shall take cognizance of the offence without prior sanction of the competent Authority.

13. Learned APP for the State, duly assisted by learned counsel appearing on behalf of O.P. No.2, submitted that appreciation of evidence is not permissible under law, while exercising inherent power under section 482 of the



Cr.P.C. There is nothing on record to show, that purchase was made in official capacity, where sanction is required. Learned APP further submitted that contents of present petition as mentioned in paragraph 17, suggest that, petitioner is only aggrieved with criminal proceeding, having implied admission as regard to alleged purchase of 'Sari' worth of Rs. 1,04,500/-, as made in complaint petition. It is submitted that petitioner was in habit of purchase 'Sari' from the shop of complainant and was well acquainted, this fact is not denied. While concluding the argument, learned APP submitted that petitioner contradicting the facts by taking shelter of “*alibi*”, which is Rule of evidence and as per settled proposition of law, same can only be appreciated during the trial. In this connection, it is further pointed out that “*alibi*” of petitioner only relied upon Air ticket, making a silence over train ticket, for up and down journey from Patna to Bhagalpur, creating a doubt on its face of plea, as regard to “*alibi*”.

- 14.** It would be appropriate to reproduce the ratio laid down through paragraph No. 102 of the Hon'ble Supreme Court, reported in the matter of *State of Haryana and*



Others vs. Bhajan Lal and Others reported in ***1992 Supp***

(1) Supreme Court Cases 335, which 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 informant 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 nay 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 persons 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.”

- 15.** It appears from aforesaid factual submission, that petitioner seeks quashing of cognizance order, mainly on the ground of contradictory statements of Inquiry



witnesses, nature of allegation, giving maximum thrust, that on the date of occurrence i.e. 27.07.2019, petitioner was at Lucknow not at Bhagalpur. In support of above submission, petitioner relied upon Air tickets, with admission to be present at Bhagalpur on 30.07.2019. Petitioner is taking shelter of rule “alibi”, which is “Rule of evidence” and also pointed certain contradictions in statement of inquiry witnesses. All these aforesaid factual positions can not be ascertained, by this Court, while exercising power under Section 482 of the Cr.P.C. Moreover, petitioner has alternate remedy, under law to raise all such issues at the time of framing of charge/explanation of accusation. Learned Judicial Magistrate, 1st Class, after scrutinizing materials available on record found this case *prima-facie* true against this petitioner.

- 16.** Hence, there is nothing to gathered from above, that complaint in issue, in entirety do not constitute, *prima-facie*, offence or same is so absurd and improbable on the basis of, which no prudent persons can ever reach a just conclusion to have sufficient ground for proceeding or same is manifestly attended with malafide, as held in



Bhajan Lal Case (Supra).

- 17.** Accordingly, present quashing petition is devoid of any merit to attract the extra-ordinary power of this Court under Section 482 of the Cr.P.C., to quash the entire proceeding of Complaint Case No.2008 of 2019, in which cognizance has been taken vide order dated 19.02.2021 by learned Judicial Magistrate 1st Class, Bhagalpur, under Section 417 and 504 of the Indian Penal Code.
- 18.** Accordingly, the present quashing petition, is being dismissed.

(Chandra Shekhar Jha, J)

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