

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No. 3943 of 2015

Arising Out of Complaint Case No.-1812 (C) Year-2013 Thana- PATNA COMPLAINT
CASE District- Patna

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1. Upendra Kumar Sinha, Son of Late Ayodhya Prasad.
 2. Nirmala Sinha, Wife of Upendra Kumar Sinha.
 3. Shekhar Sinha Son of Sri Upendra Kumar Sinha.
All resident of Village- Saksoh, Police Station- Belchhi, District- Patna. At
present resident of Road No. 3, Postal Park, P.S.- Jakkanpur, District- Patna.

... .. Petitioner/s

Versus

1. The State of Bihar
2. Nirmala Devi, wife of Rajeev Ranjan, resident of Chirayan Tanr, Postal
Park, Road No. 3, P.S.- Jakkanpur, District- Patna.

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr. Samir Kumar Sinha, Mr. Rajeev Nayan and Mr. Pramod Sinha, Advocates
For the Opposite Party/s	:	Mr. Raj Krishna Jha, Mr. Arbind Kumar Mour and Mr. Harsh Kumar, Advocates
For the State	:	Mr. Jharkhandi Upadhyay, APP

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

ORAL JUDGMENT

Date : 10-05-2019

Heard learned counsel for the petitioners; learned APP
for the State and learned counsel for the 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 application is being filed for
quashing the order dated 10.01.2014 passed in
complaint Case No. 1812 (C) of 2013 pending in*



the Court of Sri Praveen Kumar Singh, Judicial Magistrate, Ist Class, Patna where by and where under cognizance has been taken against the petitioners under section 323 and 379 of the Indian Penal Code and the petitioners have been summoned thereunder.”

3. The petitioner no. 1 is the younger brother of the husband of opposite party no. 2 (complainant), petitioner no. 2 is his wife, whereas petitioner no. 3 is his son.

4. The allegation against them is that they had entered into the house of the opposite party no. 2 and had assaulted the inmates, molested the daughter of the opposite party no. 2, and also snatched gold chain from the neck by the petitioner no. 2, whereas gold chain from the neck of the complainant was snatched by the petitioner no. 1 and that the petitioners had done so after brandishing knife and the petitioner no. 1 has taken out pistol from his pocket.

5. Learned counsel for the petitioners submitted that the ancestral house belonging to the father of the petitioner no. 1 and husband of the opposite party no. 2 has been fraudulently taken over by the opposite party no. 2 and her husband and for which the petitioner no. 1 has filed Title Partition Suit No. 120 of 2013 in February, 2013. It was submitted that the opposite party no. 2 and her husband had managed to get a gift deed fraudulently executed in the name of opposite party no. 2, by the mother of the



petitioner no. 1, for which the petitioner no. 1 had lodged Complaint Case No. 399 (C) of 2013 on 08.02.2013. Learned counsel submitted that the same was sent to the police resulting in institution of Jakkanpur PS Case No. 52 of 2013 dated 22.02.2013 in which charge sheet has been submitted and charges framed against the opposite party no. 2, her husband, two sons and one other person. Learned counsel submitted that the petitioners no. 1 and 2 are in Delhi, whereas petitioner no. 3, who is their son, is working as a sailor and does not reside at Patna. It was submitted that thus, the allegation is highly improbable and in fact absurd, of them coming to Patna and going to the house of the opposite party no. 2 and snatching away various articles and molesting the daughter of the opposite party no. 2, both at gun point and by brandishing knife. It was submitted that the falsity of the complaint would be proved from the fact that the petitioner no. 2 was sailing on a ship and was on the sea from 12th April, 2013 till 19th August, 2013 and, thus, could not have been in Patna on the date of occurrence i.e., 20th May, 2013. In support thereof, learned counsel drew the attention of the Court to photo copy of the relevant portion of the passport of the petitioner no. 3, which shows such endorsement.



6. Learned APP submitted that in view of the aforesaid, clearly the present case is totally unreliable.

7. Learned counsel for the opposite party no. 2 submitted that the Court below has taken cognizance on the basis of materials available before it, including the complaint case as well as the statement/deposition of witnesses. However, on a direct query of the Court as to how the petitioner no. 3 is said to have been present at Patna on 20.05.2013, when he was aboard a ship at the relevant date, and in view of there being no denial of such fact or evidence in support thereof, that is, copy of the relevant page of the passport, learned counsel could not answer the query of the Court. At this juncture, learned counsel for the opposite party no. 2 fairly submitted that from what has been brought on record, he is not in a position to either controvert or oppose the prayer made by the petitioner.

8. 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.

9. In the background of there being a Title Partition Suit pending between the parties and a complaint case lodged against the opposite party no. 2, her husband and two sons as also the petitioners not living in Patna, the Court finds that the contention



of learned counsel for the petitioners that the allegation of them coming to Patna, going into the house of the opposite party no. 2 and committing the offence in the manner alleged, is highly improbable and unbelievable, and most importantly, the fact of the petitioner no. 3, sailing on the sea on the relevant date, which has not been controverted on behalf of the opposite party no. 2, clearly falsifies and demolishes the entire allegations made in the complaint. The petitioner no. 3, being the nephew of the husband of the opposite party no. 2, and there being bitter acrimony between the sides relating to ancestral property, implicating the petitioner no. 3 clearly exposes the falseness, *mala fide* intention and oblique reason for filing the present complaint case by the opposite party no. 2. Thus, the present is a fit case for exercising of the inherent power of the Court under Section 482 of the Code, both to prevent abuse of the process of the Court and also to secure the ends of justice.

10. In this connection, the Court would refer to the observations made in a decision rendered in the case of **Ashutosh Mukherjee v. The State of Bihar [Cr. Misc. No. 47012 of 2014, judgment dated 18-04-2019]**, specifically paragraphs no. 21 to 26 which reads as under:

“21. Long ago, in State of Uttar Pradesh v. Mohammad Naim reported as AIR



1964 SC 703, the Hon'ble Supreme Court, in respect of Section 561-A of the Code of Criminal Procedure, 1898 (hereinafter referred to as the '1898 Code') observed at paragraphs no. 7 and 8:

"7.The first point which falls for consideration is whether the State of Uttar Pradesh had locus standi to make the application under Section 561-A CrPC. We may first read the section:

"Nothing in this Code shall be deemed to limit or affect the inherent power of the High Court to make such order 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."

*8. It is now well settled that the section confers no new powers on the High Court. It merely safeguards all existing inherent powers possessed by a High Court necessary (among other purposes) to secure the ends of justice. The section provides that those powers which the court inherently possesses shall be preserved lest it be considered that the only powers possessed by the court are those expressly conferred by the Code and that no inherent powers had survived the passing of the Code (see *Jairam Das v. Emperor* [AIR 1945 PC 94] and *Emperor v. Nazir Ahmad* [AIR 1945 PC 18] ..."* (emphasis supplied)

22. Needless to state, Section 482 of the Code is a reproduction of Section 561-A of the 1898 Code. In ***State v. Navjot Sandhu*** reported as (2003) 6 SCC 641, at paragraph no. 29, the Hon'ble Supreme Court, observed as under:

"29. ...The inherent power is to be used only in cases where there is an abuse of the process of the court or where interference is absolutely necessary for securing the ends of justice..."

(emphasis supplied)

23. In ***Jitendra Raghuvanshi v. Babita Raghuvanshi*** reported as (2013) 4 SCC 58, the Hon'ble Supreme Court in paragraph no. 14 opined:



“14. The inherent powers of the High Court under Section 482 of the Code are wide and unfettered...”

(emphasis supplied)

24. In **Parbatbhai Aahir v. State of Gujarat** reported as (2017) 9 SCC 641, the Hon’ble Supreme Court, at paragraphs no. 11, 16.1 and 16.4 held:

“11. Section 482 is prefaced with an overriding provision. The statute saves the inherent power of the High Court, as a superior court, to make such orders as are necessary (i) to prevent an abuse of the process of any court; or (ii) otherwise to secure the ends of justice...

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16.1 Section 482 preserves the inherent powers of the High Court to prevent an abuse of the process of any court or to secure the ends of justice. The provision does not confer new powers. It only recognises and preserves powers which inhere in the High Court.

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16.4. While the inherent power of the High Court has a wide ambit and plenitude it has to be exercised (i) to secure the ends of justice, or (ii) to prevent an abuse of the process of any court.” (emphasis supplied)

25. It would be pertinent to point out observations of this Court in **Rupesh Kumar v. The State of Bihar** [Cr. Misc. No. 30470 of 2016, order dated 21.02.2019] at paragraphs no. 9 and 15:

“9. From the aforesaid, it is abundantly clear that this Court has an inherent duty to ensure that whenever it comes across materials which justify a particular course of action, it should not shy away from discharging its constitutional obligations ...

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15... Moreover, every Court of extraordinary jurisdiction, more so a



Constitutional Court, like the High Court, has an inherent original power vested in it, where, for securing the ends of justice, certain exercise of power, if required, may be resorted to. Such extraordinary power cannot be curtailed, except that it be invoked in necessary circumstances.”

(emphasis supplied)

26. The High Court, being a Constitutional Court, retains enormous and inherent powers to act in the interest of justice. Suffice it would, to state that any limitation whatsoever in exercise of such power, would be self-imposed, based on the Court's discretion, having due regard to the peculiar facts and circumstances of the case. Under Section 482 of the Code, the High Court only exercises the extraordinary powers it possesses by virtue of the fact that it is a High Court. Section 482 of the Code begins with a non-obstante clause and, as such, the High Court's interminable jurisdiction cannot be fettered or whittled down.”

11. Similarly, the 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 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 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. In the opinion of the Court, the present case falls under categories 5 and 7 of the aforesaid decision in **Bhajan Lal** (*supra*) at paragraph no. 102.

13. Similarly, the Hon'ble Supreme Court in **State of Karnataka v. L. Muniswamy** reported as (1977) 2 SCC 699, where at paragraph no. 7, the following has been held:

“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.....”

14. In the aforesaid background, the Court finds that the present case is malicious, for the purpose of wreaking vengeance and to harass the petitioners, having been filed for oblique reasons with ulterior motive.

15. Accordingly, the application is allowed. The entire criminal proceeding arising out of Complaint Case No. 1812 (C)



of 2013 pending before the Court below at Patna including the order dated 10.01.2014 by which cognizance has been taken, as far as it relates to the petitioners, stands quashed.

(Ahsanuddin Amanullah, J.)

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