

(2019) 05 PAT CK 0052

In the Patna High Court

Case No : Criminal Miscellaneous No. 3816 Of 2015

Rajmani Singh And Ors

APPELLANT

Vs

State Of Bihar And Anr

RESPONDENT

Date of Decision : 07-05-2019

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 482

Indian Penal Code, 1860 — Section 34, 147, 149, 304, 307, 323, 341, 379, 448, 452, 504, 506

Code Of Criminal Procedure, 1898 — Section 561(A)

Citation : (2019) 05 PAT CK 0052

Hon'ble Judges : Ahsanuddin Amanullah, J

Bench : Single Bench

Advocate : Purushotam Sharma, Manoj Kumar, Jharkhandi Upadhyay, Shambhu Saran Singh, Md. Sakib

Final Decision : Allowed

Judgement

1. 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 is an application for quashing of the order dated 27.11.2014 passed by Sri Kumar Amit Manu, Learned Judicial Magistrate Ist Class, Daudnagar, District-Aurangabad in connection with Khudawan P.S. Case No. -15/2014, dated 10.05.2014, G.R. No. -9917/2014 by which Learned Judicial Magistrate Ist Class, Daudnagar has taken cognizance against all the petitioners/accused under Sections 147, 149, 341, 323, 452, 504, 506 and 379 of the Indian Penal Code."

3. The allegation against the petitioners in Khudwan P.S. Case No. 15 of 2014 dated 10.05.2014 filed by the opposite party no. 2 is of forcibly entering in the

house, assault and taking away of various articles including jewellery.

4. Earlier petitioner no. 3 had filed Khudwan P.S. Case No. 14 of 2014 on 08.05.2014 against the husband of the present informant and others in which allegation was assault and also snatching of gold chain and cash.

5. The opposite party no. 2-informant of the present case, is the wife of one of the accused in the case filed by petitioner no. 3. In the said case, the police after investigation had submitted charge sheet and the Court had taken cognizance under Sections 341, 323 and 304/34 of the Indian Penal Code. Challenge to the same was made by the accused in Cr. Misc. No. 3805 of 2015 in which by judgment dated 07.08.2018, a coordinate Bench has set aside the cognizance taken under Section 307 of the Indian Penal Code. However, with regard to offences under Sections 341 and 323 of the Indian Penal Code, the case was directed to proceed.

6. In the present case, learned counsel for the petitioners submitted that out of eight accused, four were not even present at the place of occurrence on the alleged date and time, which has been stated by various independent witnesses due to which the police had not sent them for trial and further, that out of four FIR witnesses, the informant and only one witness had supported the fact with regard to taking away of goods and, thus, it was submitted that Section 379 of the Indian Penal Code is not attracted in the present facts and circumstances of the case, and further, the four persons, who were not sent up for trial, also deserve relief. It was further submitted that the police had submitted charge sheet only under Sections 341, 323, 448, 504, and 506/34 of the Indian Penal Code whereas the Court had taken cognizance, both against all the eight accused as also under all sections in the FIR, i.e., 147, 149, 341, 323, 452, 504, 506, 379 of the Indian Penal Code.

7. Learned counsel for the parties have fairly admitted that the allegations in both the FIRs indicate that it is basically a dispute/difference between two social groups and in the larger public interest and also for putting to rest any further possibility of tension between the two sides when the trial will proceed and witnesses will be examined, the Court, to prevent the abuse of the process of the Court and also to secure the ends of justice, under its inherent power under Section 482 of the Code, may put an end to both the cases relating to Khudwan P.S. Case No. 14 of 2014 filed by opposite party no. 2 as well as Khudwan P.S. Case No. 15 of 2014 filed by petitioner no. 3.

8. The Court records its appreciation, where from the Bar, such a fair and just stand has been taken, which the Court also endorses to be in public interest and for the purpose of securing the ends of justice.

9. At this juncture, the Court deems it apt to quote the view of this Court, as expressed in *Ashutosh Mukherjee v. The State of Bihar* [Cr. Misc. No. 47012 of 2014, judgement 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."

10. Further, the Hon'ble Supreme Court in *State of Karnataka v. L. Muniswamy* reported as (1977) 2 Supreme Court Cases 699 at paragraph no. 7 has observed 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 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. In the aforesaid view of the matter, the Court finds that this is a fit case where the Court would exercise its inherent power under Section 482 of the Code, both for preventing the abuse of the process of the Court as well as to serve the larger public interest. The Court need not overemphasis that securing the ends of justice is far more important than just securing the ends of law.

12. In view of the aforesaid, the entire criminal proceedings, both relating to Khudwan P.S. Case No. 14 of 2014 as well as Khudwan P.S. Case No. 15 of 2014, pending before the Courts below at Daudnagar in the district of Aurangabad, including all orders which may have been passed in the said cases, stand quashed.

13. The application stands allowed in the aforementioned terms.