

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.3354 of 2013

Arising Out of PS.Case No. -255 Year- 2011 Thana -JAYNAGAR District- MADHEPURA

Mukesh Kumar Gupta @ Bablu Gupta, S/O Raj Kumar Gupta, resident of Mohalla- Kamla Road, Vidya Nagar, Ward No.6, P.S.- Jainagar, District- Madhubani and address mentioned in the FIR as resident of Station Road Jainagar, P.S. Jainagar, District- Madhubani.

.... Petitioner/s

Versus

1. The State of Bihar
2. Ravi Saxena son of late Sri Ghanshyam Das, resident of B-27A, Sector-3, Noida (U.P.) P.S. Sector-20, District Gautam Budh Nagar, U.P.

.... Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Binod Kumar Singh
For the Opposite Party No.1 : Mr. Jharkhandi Upadhyay, APP
For the Opposite Party No.2 : None.

CORAM: HONOURABLE MR. JUSTICE BIRENDRA PRASAD VERMA
ORAL ORDER

10 02-07-2015 Heard learned counsel appearing on behalf of the petitioner and the learned Additional Public Prosecutor appearing on behalf of the State. Though the opposite party no.2 has entered appearance through a counsel in view of notice issued to him by this Court by order dated 21.06.2013, whose name is printed in the daily cause list, yet when the matter has been taken up for consideration on merit, none appears on his behalf.

The petitioner has filed the present application under Section 482 Cr. P. C. invoking the inherent powers of this Court for quashing the order dated 26.06.2012 passed in G.R. No. 3337 of 2011 corresponding to Jainagar P.S. Case No. 255 of 2011 dated 11.12.2011, by the learned Chief Judicial Magistrate, Madhubani, whereby cognizance has been taken for offences

under Sections 475, 482, 486, 420 of the Indian Penal Code as also under Sections 63 and 65 of the Copyright Act.

Learned counsel appearing on behalf of the petitioner submits that the opposite party no.2 lodged an F.I.R. vide Annexure-1 with allegations that the petitioner was selling fake *Zarda* (materials produced by tobacco and other materials) by using counterfeited mark/ label of *Tulsi zarda* produced by M/S Dharampal Satyapal Limited, Noida (U.P). Accordingly, raid was conducted at the shop and godown of the petitioner and certain articles were seized, which all have been mentioned in the F.I.R. He further submitted that though the matter was investigated and charge sheet was submitted by the police, but the sample of seized articles was sent for examination at the Forensic Science Laboratory, Patna. It is pointed out that by order dated 03.05.2012 learned Chief Judicial Magistrate, Madhubani, while releasing the aforesaid seized articles in favour of the petitioner, had directed that the records be placed for taking cognizance only on receipt of the report submitted by the Forensic Science Laboratory, Patna. It is contended that after the aforesaid order, the case was adjourned on different dates, but the report of the Forensic Science Laboratory, Patna was not received by the learned court below, yet by the impugned order dated 26.06.2012 learned Chief Judicial Magistrate, Madhubani, in a most mechanical manner, has taken cognizance for offences under Sections 475, 482, 486, 420 of the Indian Penal Code as also under Sections 63 and 65 of the Copyright Act and the case was transferred to the court of learned Judicial Magistrate for trial and disposal. It is pleaded that in the aforesaid factual matrixes, the impugned order taking cognizance is liable to be quashed and set aside by this Court, as the learned

Chief Judicial Magistrate, Madhubani could have taken cognizance against the petitioner only after receipt of the report of the Forensic Science Laboratory, Patna in view of his earlier order dated 03.05.2012.

As noticed above, despite appearance in the case, none appears on behalf of the opposite party no.2. Learned Additional Public Prosecutor appearing on behalf of the State though has opposed the prayer, but has not disputed the submissions made on behalf of the petitioner.

After having heard the parties and on examination of the materials available on the record including the order sheet of the criminal case, this Court finds that by order dated 03.05.2012 the learned Chief Judicial Magistrate had opined that it will be proper to take cognizance only on receipt of the report of the Forensic Science Laboratory, Patna. The Office clerk was directed to place the record for taking cognizance only on receipt of the aforesaid report. This Court further finds that after the aforesaid order dated 03.05.2012, the matter was adjourned on 07.05.2012, 14.05.2012 and again on 18.05.2012 wherein it was noticed that the report has not been received. However, by the impugned order dated 26.06.2012, learned Chief Judicial Magistrate, Madhubani, oblivious of his own order dated 03.05.2012, has taken cognizance of the offences in a mechanical manner. In the considered opinion of this Court, the entire matter requires reconsideration and fresh decision.

In above view of the matter, the impugned order dated 26.06.2012 passed in G.R. No. 3337 of 2011 corresponding to Jainagar P.S. Case No. 255 of 2011 dated 11.12.2011 by the learned Chief Judicial Magistrate, Madhubani, is hereby quashed

and set aside and the matter is remitted back to the learned Chief Judicial Magistrate, Madhubani with a direction to pass a fresh order in accordance with law, particularly by taking into consideration the previous order dated 03.05.2012.

The present application stands allowed to the extent indicated above.

(Birendra Prasad Verma, J)

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