

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.4784 of 2015

Arising Out of PS.Case No. -2205 Year- 2008 Thana -PATNA COMPLAINT CASE District-
PATNA

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1. Pammi Devi Wife of Raj Kumar, Daughter of Mathura Prasad Jaiswal Resident of Mohallah Dighaghat, P.S. - Digha, District - Patna (Bihar).

.... Petitioner/s

Versus

1. The State of Bihar.
2. Lalbabu Chaudhary Son of Late chamari Lal Chaudhary Resident of Mohallah - Hanuman Nagar Kali mandir P.S. - Patakar Nagar (Kankarbagh), District - Patna (Bihar).

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Rakesh Kumar, Adv.
For the State : Mr. Jharkhandi Upadhyay, APP
For Opposite Party No.2 : Mrs. Meera Kumari, Adv.

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 26-11-2015

Heard learned counsel for the petitioner, learned counsel for the State and learned counsel appearing for the Opposite Party No.2.

2. In the present application filed under Section 482 of the Code of Criminal Procedure (for short 'Cr.P.C.'), the petitioner seeks quashing of the order, dated 10.12.2014, passed by the learned Adhoc Additional District & Sessions Judge VI, Patna in connection with Sessions Trial No. 1388 of 2013 arising out of Complaint Case No.2205(C) of 2008, whereby and whereunder the application filed by the petitioner under Section 227 Cr.P.C. has been rejected.

3. It has been contended that the Opposite Party No.2



Lalbabu Chaudhary submitted a written report to the Officer-in-Charge, Patrakar Nagar (Kadam Kuan) Police Station, Patna on 10.05.2006 on the basis of which Patrakar Nagar (Kadam Kuan) P.S. Case No. 390 of 2006 was registered under Sections 304-B, 120-B and 201/34 of the Indian Penal Code against the petitioner and one Amit Kumar @ Pintu and investigation was taken up. On completion of investigation, the Investigating Officer submitted final report holding the case to be a “mistake of fact” on 08.05.2007 in the court of Jurisdictional Magistrate. The final report submitted by the Investigating Officer was accepted by the Jurisdictional Magistrate.

4. Being aggrieved by the outcome of police investigation, the Opposite Party No.2 filed a complaint in the court of the Chief Judicial Magistrate, Patna on 29th October, 2007 in which the complainant was examined on solemn affirmation. In course of enquiry, some witnesses were also examined on behalf of the complainant. Thereafter, finding a prima facie case to be made out against the petitioner and co-accused Amit Kumar @ Pintu, the learned Chief Judicial Magistrate took cognizance of the offence and summoned them to face trial vide order dated 22.05.2010. On appearance of the accused persons, the learned Chief Judicial Magistrate committed the case to the Court of Sessions for trial.

5. At the stage of framing of charge, an application under Section 227 Cr.P.C. was filed by the accused persons seeking discharge from the case. After hearing the parties, the trial court dismissed the application filed on behalf of the accused persons under Section 227 Cr.P.C. vide order dated 10.12.2014. The said order dated 10.12.2014 is under challenge before this Court in the present application.

6. Learned counsel for the petitioner has submitted that the trial court has erred in law in rejecting the application filed under Section 227 Cr.P.C. as it relied on the materials collected in course of investigation of the police case for arriving at a conclusion that there are sufficient materials to frame charge against the accused persons. He has submitted that the police case instituted against the accused persons came to an end since the final report holding the case to be a “mistake of fact” submitted by the police was duly accepted by the Jurisdictional Magistrate. Thereafter, the matter had proceeded on the complaint. In the complaint case, while considering the application filed under Section 227 Cr.P.C. on behalf of the accused persons, the trial court should not have appreciated the statements of the witnesses recorded under Section 161(3) Cr.P.C. during investigation of the police case and formed its opinion on that basis. He has submitted that due to the aforesaid

error committed by the trial court, the impugned order dated 10.12.2014 is vitiated in law.

7. Mr. Jharkhandi Upadhyay, learned Additional Public Prosecutor appearing for the State concedes that while considering the application under Section 227 Cr.P.C. in a complaint case, the trial court should not have looked into the materials collected in course of investigation of the police case.

8. Mrs. Meera Kumari, learned Counsel appearing for the Opposite Party No.2 has submitted that despite the aforesaid error as pointed out by the learned counsel for the petitioner, the impugned order holds good in law as the trial court has also considered other materials collected in the complaint case on which the prosecution proposes to rely in order to prove its case while rejecting the application under Section 227 Cr.P.C. filed on behalf of the petitioner.

9. I have heard learned counsel for the parties and perused the record.

10. I find substance in the argument advanced by the learned counsel for the petitioner. Once final report of the police case was accepted by the Jurisdictional Magistrate and the case proceeded on a complaint, it was not open for the trial court to look into the materials collected in course of investigation of the police



case for rejecting the application filed on behalf of the petitioner under Section 227 Cr.P.C.

11. The police investigation under Sections 156 and 157 Cr.P.C. falling under Chapter XII under the caption “Information to the Police and their powers to investigate” and Section 200 Cr.P.C. falling under Chapter XV bearing heading “Complaints to Magistrates”, operate in distinct spheres and different stages and there is a clear distinction between the two. Once the police case was closed and the proceeding was dropped by the Magistrate and case proceeded on the basis of complaint in which after examining the complainant and the witnesses cognizance was taken by the Magistrate under Section 190(1)(a), the trial court was not justified in forming its opinion that there is ground for proceeding against the accused persons including the petitioner on the basis of materials collected during investigation in the police case pursuant to institution of an FIR under Chapter XII of the Cr.P.C.

12. In view of the discussions made hereinabove, I am of the opinion that the impugned order dated 10.12.2014, passed by the learned Adhoc Additional District & Sessions Judge VI, Patna in connection with Sessions Trial No. 1388 of 2013 arising out of Complaint Case No.2205(C) of 2008 is wholly illegal and untenable in the eye of law. Accordingly, it is hereby set aside. The matter is





remitted to the trial court. The trial court is directed to pass order on the applications filed on behalf of the accused persons under Section 227 Cr.P.C. afresh as early as possible, preferably within three months from the date of receipt of the order after consideration of the complaint case and the documents submitted therewith, and after hearing the submission of the accused and the prosecution in this behalf.

Pradeep/-

(Ashwani Kumar Singh, J)

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