

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.20195 of 2013

Arising Out of PS.Case No. -34 Year- 2009 Thana -DANDKHORA District- KATIHAR

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PANCHANAND MAHTO S/O LATE ADHIN MAHATO RESIDENT OF
VILLAGE- DANKHORA, P.S- KATIHAR, DISTT- KATIHAR.

.... PETITIONER/S

VERSUS

THE STATE OF BIHAR

.... OPPOSITE PARTY/S

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Appearance :

For the Petitioner/s : Mr. N.K. Agrawal, Sr. Adv.

Mr. Vijay Anand, Adv.

For the Opposite Party/s : Mr. Jharkhandi Upadhyay (App)

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI
ORAL ORDER

3 13-07-2015 Heard learned counsel for the petitioner as well as
learned Additional Public Prosecutor.

Petitioner has challenged order dated 12.09.2011
passed by the Chief Judicial Magistrate, Katihar in connection
with Dandkhora P.S. Case No.34 of 2009 directing the
petitioner including others to face trial for an offence
punishable under section 420,406,409,411,120B and 34 of the
IPC.

For the development of a panchayat as well as to
provide sufficient support to the small formers, welfare scheme
has been launched by the Government of India whereunder
tractor, traylor, pumping set, cultivator, cage wheel, thresher,
disk hero, jack, threshing being run by pumping set etc. were
supplied and accordingly, Panchayat Sachiv, Shri Bhagwan
Prasad Singh of Dandkhora Panchayat received the same in
the year 1993 who was authorized to receive the same. In due



course of time, all the aforesaid equipments have been digested by the unscrupulous persons on account thereof, an enquiry was conducted wherefrom guilty persons were identified and on the basis thereof, as per direction of the District Magistrate, instant prosecution has been launched by the then Panchayat Sachiv.

Petitioner happens to be the Mukhiya. He was not sent up for trial. However, differing from the opinion of the Investigating Officer in terms of Section 173 Cr.P.C., learned Magistrate summoned him in a manner as indicated above.

It has been submitted on behalf of petitioner that from perusal of the case diary, it is apparent that complicity of petitioner during course of commission of crime as alleged is not at all made out. None of the witnesses had named the petitioner nor his complicity has been traced out. As such, summoning of petitioner is found contradictory to the materials having collected by the Investigating Officer during course of investigation and on account thereof, there was no cogent reason available before the learned Chief Judicial Magistrate to differ from the opinion of the Investigating Officer being not sent up for trial.

It has further been submitted that the brother of Shri Bhagwan Singh, namely, Ramdeo Prasad Singh had appeared before the Investigating Officer on 15.11.2009 and produced photocopy of a paper suggesting that in terms of



letter no.145 dated 17.03.1997 Bhagwan Prasad Singh had already handed over charge on 18.03.1997 to the then Animal Husbandary Officer more particularly relating to agricultural instrument. In the aforesaid background, it has also been submitted that the impugned order relating to petitioner is fit to be set aside.

The learned Additional Public Prosecutor opposed the prayer.

So far status of Magistrate at the time of taking cognizance is concerned, he is not at all found puppet at the hands of Investigating Officer. He has option to accept the same, reject the same and further, may direct re-investigation, after considering the final form submitted by the Investigating Officer in terms of Section 173 Cr.P.C. Therefore, the mode of action whereunder the learned lower court had differed its opinion from the conclusion of the Investigating Officer is found within the legal ambit.

So far stage is concerned, certainly prima facie materials is to be seen. At the present moment the Magistrate is not at all required to see whether the materials available on the record will ultimately lead into conviction of an accused. The aforesaid view is found duly endorsed by the Hon'ble Apex Court in a decision report in 2015 Cr.L.J. 241.

Now, coming at individual score relating to petitioner, it is apparent from the inquiry report, which

happens to be part and parcel of the First Information Report that pumping set was being used by the petitioner as well as petitioner being Mukhiya had overshadowed and rightly under para-13 and 13, as relied by the learned lower court, presence of petitioner was there along with Sri Bhagwan Singh facilitating the equipment hired by others and in likewise manner, paragraph 21 and 34 of the case diary also speaks his involvement. In para-53 Md. Rahis had disclosed that Prabhua Singh has taken away trailer after getting nod from the petitioner.

As such, I do not find any merit in the instant petition. Consequent thereupon is rejected. However, this order will not cause prejudice to the interest of petitioner during trial.

(Aditya Kumar Trivedi, J.)

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