

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.9097 of 2013

Arising Out of PS.Case No. -23 Year- 1996 Thana -WARSALIGANJ District- -

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Alakh Narayan Lal Son of Late Sheo Narayan Lal, at Present House of
Sheo Nandan Prasad Singh of Mohalla Chanakya Colony, Parsa Bazar
Sation Road, P.O.- Kurthaul, P.S.- Parsa Bazar, District- Patna

.... Petitioner/s

Versus

The State Of Bihar

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Ajay Kumar Thakur
Mr. Md. Imteyaz Ahmad
Mr. Nitesh Kumar

For the Opposite Party/s : Mr. Umanath Mishra, APP

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CORAM: HONOURABLE MR. JUSTICE BIRENDRA PRASAD VERMA
ORAL ORDER

5 16-07-2015

Heard the parties.

2. The petitioner has filed the present application under Section 482 Cr. P.C. for quashing the order dated 2nd February, 2013 passed in G.R. No. 187 of 1996 corresponding to Warsaliganj P.S. Case No. 23 of 1996 dated 09.02.1996 registered for offences under Sections 420, 467, 468, 469 of the Indian Penal Code as also under Section 7 of the Essential Commodities Act.

3. Learned counsel appearing on behalf of the petitioner submits that the petitioner himself was the informant of aforesaid Warshaliganj P.S.Case No. 23 of 1996 dated 09.02.1996 in which one Brij Mohan Lal was made an accused. However, on close of investigation, apart from the F.I.R. named accused and others, the petitioner was also charge sheeted on 26.03.2003. Accordingly, cognizance was taken. It is further submitted that, in fact, in the whole case diary no material has been collected by the Investigating Officer for arraigning the petitioner as an accused. In that view of the matter, a petition under section 239 Cr. P.C.

was filed on behalf of the petitioner before the learned S.D.J.M., Nawada for his discharge, which has been dismissed by the impugned order dated 2nd February, 2013 without application of his independent judicial mind to the facts of the case.

4. In the present case by order dated 08.07.2013 case diary was called for by a Bench of this Court. Mr. Umanath Mishra, learned Additional Public Prosecutor appearing on behalf of the State, after going through the case diary, submits that there is no direct evidence against the petitioner, but a suspicion has been raised by some of the witnesses showing complicity of the petitioner also in commission of the crime in question. By way of reply, learned counsel appearing on behalf of the petitioner submits that even if those statements are taken to be true, then in that case also the offence alleged is not attracted against the petitioner and, therefore, the impugned order passed by the learned Magistrate is not sustainable in law.

5. After having heard the parties and on examination of the materials available on the record, this Court finds that while passing the impugned order dated 2nd February, 2013 the learned S.D.J.M., Nawada has not recorded any finding as to what are the materials available on record, which may justify framing of charge against the petitioner, though, admittedly, the petitioner himself was the informant of that criminal case. It is apparent that the learned Magistrate, while passing the impugned order has not examined the entire materials and has not applied his independent judicial mind to the facts of the case. Therefore, this Court is of the opinion that this matter requires re-consideration and fresh decision by the learned Magistrate.

6. For the reasons recorded above, the impugned order

dated 2nd February, 2013 passed in G.R. Case No. 187 of 1996 corresponding to Warsaliganj P.S. Case No. 23 of 1996 dated 09.02.1996 by the learned S.D.J.M., Nawada, is hereby set aside and quashed and the matter is remitted back to the learned court below for consideration and deciding the petition filed on behalf of the petitioner under Section 239 Cr. P.C. afresh after looking into the entire material available on the record.

7. The petitioner is hereby directed to appear before the learned Magistrate within a period of four weeks from today with a certified copy of the present order. Thereafter the learned Magistrate shall fix a firm date for hearing the petition filed on behalf of the petitioner and shall decide that petition in accordance with law by taking into consideration the observations made above. Let the case diary received, pursuant to the order dated 8.7.2013, be sent down to the learned court below.

8. The application stands allowed to the extent indicated above.

(Birendra Prasad Verma, J)

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