

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.34553 of 2012

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Deepak Kumar, son of Sri Ramashish Singh, R/O Vilalage- Manjhaul Purbi
Tola, P.S. Cheriya Bariarpur, District- Begusarai. Petitioner

Versus

The State of Bihar.. Opposite Party

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Appearance :

For the Petitioner/s : Shri. Pritish Kumar Lal, Advocate
For the Opposite Party/s : Shri. Mr. Uday Pratap Singh (APP)

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CORAM: HONOURABLE SHRI JUSTICE DHARNIDHAR JHA
ORAL ORDER

3. 09-03-2015. Heard.

The facts are queer but the result has to be very clear in the light of Section 210 Cr.P.C, which resolves a procedural tangle, which may appear in a court of law during an inquiry of the trial.

The provision, one may find on its plain consideration, states that if there are two cases, one instituted by filing a police report and the other otherwise than filing the police report, i.e. by filing a complaint petition, and if the subject matter of the prosecution which was launched by the two instruments was the same and similar, the Magistrate has to withhold the proceedings on the complaint petition and to call for a report from the police officer conducting the investigation. It may further appear that if the police makes a report and finds that a report under section 173 Cr.P.C. has already been made, then the proceedings on the petition of complaint, shall be stayed and the Magistrate has to proceed to try the case as per procedure for trial of a case instituted on the police report. The sine qua non of this provision is further that the accused person in the police case and complaint petition should be same and similar. In case the descriptions of the accused persons were different in the two instruments, then

the complaint could be inquired into and that too only in respect of other accused persons than those who did not figure in the police report.

Here, in the present case, Opposite Party No.2 has filed a written report addressed to the S.P, Begusarai and on that basis, Cheriya Bariarpur P.S.Case No.113 of 2011 was lodged. It appears from perusal of Annexure-4 that the police reported the matter not true and submitted the Final Form No.8 of 2012 dated 31st January, 2012.

The learned Chief Judicial Magistrate, Begusarai, by his order dated 17.3.2012, directed issuance of notice to the informant so as to allowing the informant to establish that the accused persons were required to be put on trial. Before the order issuing notice to the informant was passed, and before the submission of the Final Form on 31.1.2012, Opposite Party No.2 herein, filed a full fledged complaint petition before the learned Additional Chief Judicial Magistrate, Rosera vide Complaint Petition No.893 of 2011. The accused was the present petitioner in both the cases and facts of the written report and the complaint petition were same and similar. The allegations were also similar against the petitioner.

The learned Additional Chief Judicial Magistrate, Rosera was not apprised of the fact that the Cheriya Bariarpur police in the district of Begusarai, had undertaken the investigation and had probably found the case not true and as such, had decided to submit the final form dated 31.1.2012 on account of which, the learned Additional Chief Judicial Magistrate, considering the prayer made to him, transmitted a copy of the complaint petition no.893 of 2011 to the concerned police station for investigating



the case under section 156 (3) Cr.P.C. That order of the learned Additional Chief Judicial Magistrate, Rosera resulted in institution of Hasanpur P.S. Case No.11 of 2012 under various sections of the Penal Code and section 138 of the Negotiable Instruments Act. Again, the informant was the same Lalan Kumar Purbey who is Opposite Party No.2 and the solitary accused in the array of accused is the present petitioner.

I do not find it very much clear as to when the petition of complaint was filed before the Additional Chief Judicial Magistrate, Rosera, which gave rise to institution of Hasanpur P.S.Case No.11 of 2012. But this is clear that Hasanpur P.S.Case No.11 of 2012 was registered on 04.2.2012, i.e after submission of the final form in Cheriya Bariarpur P.S.Case No.113 of 2011. That definitely goes to show that the complaint petition was filed much before submission of the final form. At any rate, what appears further is that the learned Chief Judicial Magistrate, Begusarai was seized with the matter and was holding inquiry so as to decide as to what course of action was to be adopted by him in law after he has received final form in Cheriya Bariarpur P.S.Case No.113 of 2011 and as such, what I find is that section 210 Cr.P.C. was duly attracted to the situation of the pendency of the inquiry before the Chief Judicial Magistrate, Begusarai and to the order which was passed on the petition of complaint, presented before the Additional Chief Judicial Magistrate, Rosera.

In my opinion, it would have been appropriate if the Additional Chief Judicial Magistrate, Rosera had sought a report from the police under Section 210 Cr.P.C. But again, what I find is that the Additional Chief Judicial Magistrate, Rosera was not

apprised with the fact that a full fledged report had been lodged in Cheria Bariarpur case, and that the matter was pending inquiry before the learned Additional Chief Judicial Magistrate, Begusarai. But in any view, the implication which may be arising on the facts stated above clearly indicates violation of the provisions of Section 210 Cr.P.C. and if that was so, then it vitiates the very institution of the case by Hasanpur police which started investigation on the basis of a petition of complaint vide Hasanpur P.S.Case No.11 of 2012.

Section 210 of the Cr.P.C. prohibits institution of two parallel proceedings of the same nature against same person in respect of the same fact by filing F.I.R. and complaint. The rationale behind the provision is not only to save the time of the court but also to save different courts from trying the accused by taking cognizance on similar facts. It further is an attempt to avoid giving two decisions on similar sets of facts. If the court allows Hasanpur P.S.Case No.11 of 2012 to go to trial, it shall be a sheer abuse of the process of the court and it shall also be prejudicial to the ends of justice.

In the result, the petition succeeds. Hasanpur P.S.Case No.11 of 2012 including the proceedings arising out of it is quashed. Learned Chief Judicial Magistrate, Begusarai is directed to proceed with the Cheria Bariarpur P.S.Case No.113 of 2011.

The copies of the orders may be transmitted to the Additional Chief Judicial Magistrate, Rosera and the Chief Judicial Magistrate, Begusarai.

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(Dharnidhar Jha, J.)

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