

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.49335 of 2012

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Sonu Kumar S/O Shri Shailendra Mahto Resident Of Village- Asha Nagar, P.S-
Soh Sarai, District- Nalanda.

.... Petitioner

Versus

The State Of Bihar

.... Opposite Party

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Appearance :

For the Petitioner/s : Mr. Rajendra Prasad Singh, Sr. Adv.
Mr. Pramod Kumar, Adv.
Mr. Ritesh Kumar, Adv.
For the Opposite Party : Md. Mushtaque Alam, APP

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CORAM: HONOURABLE MR. JUSTICE AMARESH KUMAR LAL
ORAL JUDGMENT

Date: 30-04-2015

This application has been filed for quashing the order dated 12.9.2012 passed by learned Sessions Judge, Nalanda in Cr. Revision No. 191 of 2012 as well as order dated 16.12.2003 taking cognizance against the petitioner under Sections 341, 447, 323, 504, 386/34 of the Indian Penal Code passed by the learned Judicial Magistrate, 1st Class, Bihar Sharif in Bihar P. S. Case N. 149 of 2003, G. R. No. 902 of 2003 and also the order dated 16.3.2011 as well as the entire proceedings.

It is submitted by learned senior counsel for the petitioner that the informant filed Bihar P. S. Case No. 149 of 2003 against the petitioner and others for the offence punishable under



Sections 341, 447 and 386 IPC. After investigation, the police submitted Charge-Sheet No. 92 of 2003 dated 25.10.2003 for the offence punishable under Sections 341, 323, 504/34 IPC but without any further investigation a petition was filed before the learned Magistrate to add Section 386 IPC as it was left to be mentioned due to mistake.

He has further submitted that under the proviso of Section 173(8) Cr.P.C., Investigating Officer has been given liberty to investigate the case and further submit the report to the Magistrate, but in this case no further investigation was made and without any further investigation only a petition had been filed before the Magistrate to add Section 386 IPC which is not in accordance with law.

In reply, learned counsel for the State has submitted that on perusal of order dated 16.12.2003 passed by the learned Magistrate it appears that he had passed the order finding material available in paragraph 37 of the case-diary for adding Section 386 IPC, as such, there is no illegality in the same.

From perusal of proviso to Section 173 Cr.P.C. it appears that the Police Officer has been empowered to submit the investigation report to the Magistrate who has power to take



cognizance. The Police has also power to further investigate a case under sub-Section 8 of Section 173 Cr.P.C. The Magistrate has found that there is material for the offence punishable under Section 386 IPC in paragraph 37 of the case-diary, as such, I do not find any illegality so far addition of Section 386 IPC is concerned. Therefore, above contention of learned counsel for the petitioner has got no substance and it is not tenable.

Learned counsel for the petitioner has submitted that on coming to know that a case had been lodged against the petitioner and others, he appeared before the Police and who after examining the merit of the case allowed him bail and the petitioner had been availing bail granted by the police and he had never misused the privilege of bail in any manner. He has further submitted that thereafter, neither the police had approached the petitioner nor any summon or warrant of arrest had been served upon the petitioner nor the police had ever gone to execute the process of the Court as such the order dated 16.3.2011 passed by the learned Magistrate declaring the petitioner as a permanent absconder is illegal and without any justification.

Learned counsel for the State could not controvert this contention.



It appears that the petitioner has annexed the whole order-sheet passed by the learned Magistrate and it does not appear that notice has been served upon the petitioner nor there is any report regarding the refusal of the petitioner to accept his notice. In this view of the matter, the contention of learned counsel for the petitioner that without any service of notice or summon or warrant of arrest the petitioner has been declared absconder, has got substance as such order dated 16.3.2011 passed by the learned Magistrate is illegal and accordingly it is set aside.

Further argument of learned counsel for the petitioner is that against the order dated 16.3.2011 passed by the learned Magistrate showing the petitioner as absconder was challenged in Cr. Revision No. 191 of 2012 but without going into the facts and circumstances of the case, the said revision application was dismissed vide order dated 12.9.2012.

It appears from the impugned order dated 12.9.2012 passed by the learned Sessions Judge that he has not gone through the record and it has not been noticed by the learned Sessions Judge as to whether any summon or warrant of arrest has ever been served/executed against the petitioner and accordingly, the impugned order dated 12.9.2012 is also not sustainable and it is

set aside.

Considering the facts and circumstances, this application is allowed to the extent stated above.

Learned counsel for the petitioner submits that the petitioner will appear before the Magistrate in the aforesaid case within a month.

(Amaresh Kumar Lal, J.)

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