

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.26360 of 2013

Arising Out of PS.Case No. -136 Year- 2012 Thana -KATORIA District- BANKA

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Md. Ansar , son of Md. Maitul, Resident of village – Nemuwa, Police
Station – Barahat, District Banka

.... Petitioner/s

Versus

1. The State of Bihar
2. Bhim Mandal, s/o Late Indeshwari Maandal, r/o village Inarabaran,
P.S. Katoria District banka

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Ajay Mukherjee

For the Opposite Party/s : Mr. Anant Kumar (App)

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CORAM: HONOURABLE MR. JUSTICE RAKESH KUMAR

ORAL ORDER

3 23-06-2016 Despite valid service of notice, the informant/ opposite
party no. 2 has preferred not to appear.

Heard Sri Ajay Mukherjee, learned counsel for the
petitioner and Sri Anant Kumar, learned A.P.P.

The petitioner, invoking inherent jurisdiction of this
court under section 482 of the Code of Criminal Procedure, has
prayed for quashing of an order dated 2.5.2013 passed by the
learned Sessions Judge, Bhagalpur in Cr. Revision No. 90 of
2013. By the said order the learned Sessions Judge, Bhagalpur has
dismissed the revision, which was preferred against the order of
cognizance dated 6.2.2013 passed by the learned Chief Judicial
Magistrate, Banka, in Katoria P.S. Case No. 136 of 2012 / G.R.

Case No. 1092 of 2012 registered for the offence under Section 457, 380, 411 of the Indian Penal Code.

Learned counsel for the petitioner submits that the order of cognizance passed by the learned Chief Judicial Magistrate, Banka is palpably incorrect and liable to be set aside. He submits that F.I.R. was lodged against unknown. However, during investigation some suspicion was raised against the petitioner. Finally after thorough investigation police found no material against the petitioner and thereafter final report was submitted by the police exonerating the petitioner. Even though the petitioner was exonerated by the police and his name was not incorporated in column no. – 11 of the charge sheet, the learned Magistrate without assigning any reason has passed the order of cognizance. He submits that though the order of learned Chief Judicial Magistrate was required to be interfered by the revisional court, in a mechanical manner the Sessions Judge has rejected the revision petition.

In this case learned A.P.P. by way of referring to certain facts in the case diary submits that there is some material suggesting complicity of the petitioner, however he was not in a position to satisfy the court as to whether order of the learned Chief Judicial Magistrate specifies any reason for differing with



the police report. Normally after rejection of the revision petition against an order of the learned Magistrate a petition filed under section 482 of the Code of Criminal Procedure is considered as second revision, which is not maintainable, however, in special facts and circumstances of the present case particularly the order of the Chief Judicial Magistrate, the court is of the opinion that the learned Chief Judicial Magistrate has passed the order of cognizance in a mechanical manner. On perusal of the material on record particularly Annexure – ‘3’ to the present petition it is evident that the petitioner was not named in the F.I.R., was exonerated by the police and his name was not incorporated in column no. – 11 of the charge sheet. Once after thorough investigation police had submitted charge sheet in normal course the learned Chief Judicial Magistrate at the time of differing with the police report was required to succinctly assign reason. On perusal of the order of Chief Judicial Magistrate the court is satisfied that no reason has been assigned. The police report may not be treated as a waste paper, if it is submitted after thorough investigation.

In view of the fact that order of the Chief Judicial Magistrate has been passed completely without application of mind, the same is set aside. Similarly revisional court's order i.e.

order passed in Cr. Revision No. 90 of 2013 is also set aside.

The petition stands allowed.

(Rakesh Kumar, J)

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