

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.31503 of 2014

Arising Out of PS.Case No. -107 Year- 2011 Thana -UJIYARPUR District- SAMASTIPUR

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Ramagya Jha S/o Late Ramroop Jha resident of village- Ramchandrapur,
P.S.- Sarairanjan, District- Samastipur

.... Petitioner.

Versus

The State of Bihar

.... Opposite Party.

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Appearance :

For the Petitioner : Mr. Dhirendra Kumar Jha, Advocate.

For the State : Mr. Sanjay Kr.Tiwary, A.P.P.

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR
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ORAL ORDER

2 22-09-2016 Heard learned counsel for the petitioner as well as

learned Additional P.P.

2. Vide the order impugned dated 19.06.2014 passed by
the learned Sub-Divisional Judicial Magistrate, Dalsingsarai,
Samastipur in Gr. No. 337 of 2011, T.R. No. 1413 of 2014 (State
Vs. Ramaghya Jha and others) arising out of Ujiarpur P.S. Case
No. 107 of 2011, a prayer having been made on behalf of the
petitioner under Section 239 of Cr.P.C. has been rejected.

3. For better appreciation, the order impugned Section
239 as well as 240 of Cr.P.C. are quoted below;

Section 239. *When accused be discharged.- If, upon
considering the police report and the documents
sent with it under Section 173 and making such
examination, if any, of the accused as the
Magistrate thinks necessary and after giving the*

prosecution and the accused an opportunity of being heard, the Magistrate considers the charge against the accused to be groundless, he shall discharge the accused, and record his reason for so doing.

Section 240. Framing of Charge.—(1) *if, upon such consideration, examination, if any, and hearing, the Magistrate is of opinion that there is ground for presuming that the accused has committed an offence triable under this Chapter, which such Magistrate is competent to try and which, in his opinion, could be adequately punished by him, he shall frame in writing a charge against the accused.*

(2) The charge shall then be read and explained to the accused, and he shall be asked whether he pleads guilty of the offence charged or claims to be tried.

4. From the order impugned, it is apparent that instead of following procedure in terms of requirement, learned lower court observed that in the background of the fact that cognizance has been taken against the petitioner, on account thereof, it is not desirable to discharge.

5. Learned lower court should have considered that framing of the charge is the stage wherefrom trial against the accused commences. Because of the fact that from this stage actually accused is put under rigor of trial, on account thereof, an

obligation has been put over the Court to scrutinize the materials having placed before it in terms of Section 173 Cr.P.C and further, to opine whether the charge happens to be groundless. If so, will discharge the accused. That means to say, irrespective of order of cognizance of an offence, the same will not eclipse the exercise which the Court is expected to perform at the stage of framing of charge, and that happens to be reason behind presence of specific provision, irrespective of nature of trial. Therefore, forbidding to filter the materials to the extent, as required under appropriate stage on the ground of presence of order of cognizance happens to be nothing but an absurdity whereupon order impugned would not survive.

6. That being so, order impugned is set aside. The petition is allowed. The matter is remitted back to the learned lower court to proceed afresh in accordance with law.

(Aditya Kumar Trivedi, J)

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