

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Revision No.709 of 2014

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1. Yadunandan Prasad S/o Late Sri Ishwar Ram Resident of Village Madarganj, P.O. Kochra, Police Station Bena, District Nalanda.

.... Petitioner/s

Versus

1. The State of Bihar.
2. Abhishek Kumar S/o Sri Surendra Prasad Resident of Village Paithna, P.O. Bhagwan Bigha, Police Station Bena, District Nawadah.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Sanjeev Ranjan

For the Respondent/s : Mr. Mukesh Kr. Singh (App)

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CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI
SHARAN SINGH
ORAL ORDER

3 22-12-2016 Heard learned counsel for the parties.

2. An order, dated 18.07.2014 passed in T.R. No. 168 of 2013 arising out of Warsaliganj P. S. Case No. 14 of 2011 by learned Chief Judicial Magistrate, Nawada, whereby he has framed charges against the petitioner of commission of offence punishable under Sections 341,342 and 323 of the Indian Penal Code has been put to challenge in the present criminal revision application filed under Sections 397 read with 401 of the Code of Criminal Procedure, 1973 (hereinafter referred to as the **Code**).

2. Despite service of notice upon Opposite party No.2, the informant of the case, there is no representation on his behalf.

3. The short point which has been taken on behalf of



the petitioner is that the said order is in breach of Section 239 of the Code. It is specific case of the petitioner that neither any opportunity of being heard was given to the petitioner as contemplated under Section 239 of the Code nor prior to framing of charge, the police documents were served upon him.

4. There is no denial of the stand taken on behalf of the petitioner.

5. Learned counsel appearing on behalf of the petitioner has submitted that it was a fit case where the Magistrate ought to have exercised power under Section 239 of the Code since the charge against the petitioner was groundless as there was no material on record to justify framing of charge under Sections 341 and 323 of the Indian Penal Code on record. According to him, had the petitioner been given opportunity as contemplated under Section 239 of the Code, he could have satisfied the Magistrate that there was no material to proceed and, therefore, the petitioner deserves to be discharged at that stage itself.

6. In the present case, the police appear to have submitted the police report on 31.07.2011. From the impugned order, dated 18.07.2014, it appears that copy of the police report and the documents were made available to the petitioner, who is the accused in the said case on 18.07.2014 itself and thereafter, the



charge was framed on the same day.

7. Section 239 of the Code reads thus:-

“239. When accused shall 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 reasons for so doing”.

(Emphasis mine)

8. Section 239 of the Code mandates that the Magistrate, after giving the prosecution and the accused an opportunity of being heard, if considers the charge against the accused to be groundless, shall discharge the accused and record his reasons for doing so.

9. Section 240 of the Code comes thereafter, which deals with framing of charge. Language of Section 240 of the Code is clear and it refers to the step contemplated under Section 239 of the Code. Without following the mandate of Section 239 of the Code, the Magistrate would not have proceeded to the stage of framing of the charge as contemplated under Section 240 of the Code, which reads thus:-

“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.”



10. On careful reading of the provisions as contained in Section 240 of the Code, it is easily evincible that the Magistrate will have to first consider and examine the police report and documents and after having heard the parties, he can proceed for framing of charge under Section 240 of the Code, if he is of the opinion that there is ground for presuming that the accused had committed an offence triable under the said Chapter. The expression “if, upon such consideration, examination, if any and hearing” essentially refers to the requirement of considering and examining the police report and documents and giving the prosecution and accused an opportunity of being heard as contemplated under Section 239 of the Code.

11. Section 239 of the Code is an important stage between the submission of a police report under Section 173 of the Code and beginning of trial after framing of charge. This is one such stage where an accused has been given an opportunity of being heard so as to convince the Magistrate that the charge(s) against him is/are groundless. In my considered view, the stage of framing of charge under Section 240 of the Code can be reached only after following the statutory mandate under Section 239 of the Code. The requirement of consideration and giving the prosecution and the accused an opportunity of hearing as



contemplated under Section 239 of the Code is mandatory.

12. In the present case, evidently the Court has jumped the stage of Section 239 of the Code and has framed charge under Section 240 of the Code without following the mandatory statutory requirement under Section 239 of the Code.

13. The impugned order dated 18.07.2014 cannot be sustained, which is accordingly, set aside.

14. The matter is remitted back to the Court of learned Chief Judicial Magistrate, Nawada to pass an order afresh after giving an opportunity of being heard to the petitioner as contemplated under Section 239 of the Code on the police report and documents submitted under Section 173 of the Code.

15. This application is, accordingly, allowed.

(Chakradhari Sharan Singh, J)

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