

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.21697 of 2013

Arising Out of PS.Case No. -162 Year- 2008 Thana -PRANPUR District- KATIHAR

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Sundar Prasad Mandal @ Sundar Mandal S/O Late Mahavir Mandal
Resident of Village Dharvan, P.S. Pranpur, District Katihar.

.... Petitioner

Versus

1. The State of Bihar
2. Shobha Kant Biswas, son of Late Jai Kant Biswas, resident of village-
Panki, P.S. pranpur, District- Katihar.

.... Opposite Parties

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Appearance :

For the Petitioner/s : Mr. Bholu Prasad, Advocate

For the Opposite Party/s : Mr. Pawan Kr.Jha(App)

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR
TRIVEDI
ORAL ORDER

4 08-03-2016 Heard learned counsel for the petitioner as well as
learned Additional P.P.

Petitioner is aggrieved by an order dated 16.3.2013
whereby and where under the learned lower court had rejected the
prayer of the petitioner purported to under Section 239 of the Code
of Criminal Procedure.

From the written report, it is evident that presence of
the petitioner has been shown at the fag end of the written report
carrying an allegation that on query, dealer Md. Yahya had
disclosed that Mukhiya Sunder Prasad Mandal had directed him to
pay the sale proceed after sale of 40 quintals of wheat.

Gone through the impugned order. In order to properly

appreciate the same, Section 239 of the Cr.P.C. is quoted below :

“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.”

In **Sonu Gupta Vrs. Deepak Gupta** reported in **2015**

(2) PLJR 321 (Supreme Court), the Hon’ble Apex Court has held as follows :

“8. It is also well settled that cognizance is taken of the offence and not the offender. Hence at the stage of framing of charge an individual accused may seek discharge if he or she can show that the materials are absolutely insufficient for framing of charge against that particular accused. But such exercise is required only at a later stage, as indicated above and not at the stage of taking cognizance and summoning the accused on the basis of prima facie case. Even at the stage of framing of charge, the sufficiency of materials for the purpose of conviction is not



the requirement and a prayer for discharge can be allowed only if the court finds that the materials are wholly insufficient for the purpose of trial. It is also a settled proposition of law that even when there are materials raising strong suspicion against an accused, the court will be justified in rejecting a prayer for discharge and in granting an opportunity to the prosecution to bring on record the entire evidence in accordance with law so that case of both the sides may be considered appropriately on conclusion of trial.”

After having parallel scrutiny of Section 239 Cr.P.C. as quoted above along with the principle laid down by the Hon’ble Apex Court as referred above, when the order impugned has been gone through, it is apparent that learned lower court fell in error in rejecting the prayer of the petitioner only on the ground that charge sheet had already been submitted after completing investigation as well as cognizance had also been taken. While adjudicating upon the prayer of an accused under Section 239 of the Cr.P.C., the materials so collected during course of investigation is to be properly scrutinized in order to perceive whether grave suspicion is found persisting against an accused. True it is that at the time of framing of charge, the learned lower court would not delve whether the material having available on the

record will ultimately conclude in conviction, simultaneously is also found to identify whether the materials so collected let grave suspicion against an accused. The order impugned is found silent over the same.

Accordingly, same is set aside. Petition is allowed. The matter is remitted back to the learned lower court to proceed afresh in light of the principle laid down by the Hon’ble Apex Court as indicated above.

(Aditya Kumar Trivedi, J)

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