

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.49300 of 2013

Arising Out of PS.Case No. -6 Year- 2001 Thana -HALSI District- LAKHISARAI

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Sunil Kumar Sinha Son Of Late Awadh Kishore Sinha resident of Mohalla-
Basudeopur, P.S.- Kotwali, District- Mungher, At Present Posted As

.... Petitioner/s

Versus

The State Of Bihar

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Vishwanath Prasad Singh, Sr. Adv.

For the Opposite Party/s : Mr. Akhileshwar Dayal

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CORAM: HONOURABLE MR. JUSTICE RAKESH KUMAR

ORAL JUDGMENT

Date: 28-07-2016

Heard Sri Vishwanath Prasad Singh, learned senior counsel, who was assisted by Sri Sanjay Kumar Singh, learned counsel for the petitioner and Sri Akhileshwar Dayal, learned A.P.P.

The sole petitioner, who at the relevant time was Branch Manager in the State Bank of India has approached this court invoking its inherent jurisdiction under section 482 of the Code of Criminal Procedure, with a prayer to quash an order dated 13.5.2013 passed by learned Sub Divisional Judicial Magistrate, Lakhisarai whereby the learned Sub Divisional Judicial Magistrate has rejected



the petition filed under section 239 of the Cr.P.C. on behalf of the petitioner for his discharge in Halsi P.S. Case No. 6 of 2001, G.R. No. 46 of 2001 registered for the offence under section 420/ 467/ 468/ 471 of the Indian Penal Code. It was submitted by learned senior counsel for the petitioner that the petitioner while was posted as Branch Manager in Halsi Branch of the State Bank of India detected a false credit entry in the savings account of one Sanjay Kumar in which within a short span huge amount was withdrawn from the said account. It was argued by learned senior counsel that the petitioner immediately after detecting the same took steps for recovery of the said amount. Thereafter, the excess withdrawn amount with interest was got deposited in the account. However , after the petitioner was transferred from the said Branch his successor lodged the present F.I.R. and petitioner was made accused. The case was thoroughly investigated and finally the petitioner was exonerated by the Investigating Officer . The learned Additional Chief Judicial Magistrate differing with the police report took cognizance of offence even against the petitioner. At the stage of charge the petitioner filed a detailed petition for discharge vide Annexure – ‘4’ to the present petition elaborating the ground for his discharge. However, the learned Sub Divisional Judicial Magistrate by the impugned order rejected the discharge petition without



considering the facts disclosed in the discharge petition only on the ground that in this case cognizance order was earlier passed by learned Additional Chief Judicial Magistrate. It has been argued by learned senior counsel that it is true that at the time of rejection of discharge petition, there is no requirement for assigning detailed reason, but the reason which has been assigned by the learned Sub Divisional Judicial Magistrate appears to be unsustainable. He submits that once petition was filed for discharge giving detailed ground for his discharge, at least some thing should have been indicated, and as such, according to learned senior counsel the order impugned is liable to be set aside. During the pendency of this petition the petitioner has filed an interlocutory application vide I.A. No. 1445 of 2016 and he has brought on record the order dated 28.10.2015 whereby the learned Magistrate has framed charge. Accordingly, a prayer has been made to also quash the order of framing charge.

Learned A.P.P. after going through the case diary submits that there is some material for forming opinion that there is prima facie case against the petitioner and according to learned A.P.P. the petition is fit to be rejected.

Besides hearing learned counsel for the parties I have perused the materials available on record. It is true that section 239 of



the Cr.P.C. does not require assigning detailed reason for rejecting the discharge petition, but the ground which has been indicated in the impugned order i.e. the order dated 13.5.2013 appears to be totally untenable. The learned Sub Divisional Judicial Magistrate while passing order on discharge petition has considered as if he was subordinate to the Additional Chief Judicial Magistrate and without application of mind he has rejected the discharge petition indicating therein that in the case cognizance order was passed by the learned Additional Chief Judicial Magistrate. The court is surprised to notice such type of observation of the court below. Once he was dealing with the matter he was totally independent to take decision on the basis of materials available on record. He was not required to be guided by the order of cognizance passed by the Additional Chief Judicial Magistrate. On this ground only the court proposes to set aside the order. Accordingly, the order dated 13.5.2013 is hereby set aside. Secondly, after framing of charge it is not proper for this court to interfere with the trial. In this case further after rejection of discharge petition charge has already been framed. Fact remains that the present petition was filed in the year 2013 and charge has been framed in the month of October 2015. Since the basis for framing of charge is itself technically not permissible, in exceptional circumstances the order of framing of charge is also required to be

set aside. Accordingly both the orders i.e. the order dated 13.5.2013 passed by the learned Sub Divisional Judicial Magistrate whereby discharge petition was rejected and subsequent order i.e. the order dated 28.10.2015 whereby charge was framed are hereby set aside. The matter is remitted back to the learned Magistrate to pass order afresh in accordance with law. The learned Magistrate is required to pass order on discharge petition which was filed earlier on behalf of the petitioner within a period of three months from the date of receipt / production of a copy of this order.

In view of earlier order photo copy of case diary has been received. Office is directed to remit back the same to the court below forthwith.

The petition stands allowed with the aforesaid observation and direction.

(Rakesh Kumar, J)

Praful/-

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	01-08-2016
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