

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No. 1526 of 2014

Arising Out of PS.Case No. -144 Year- 2011 Thana -BIHARSHARIF District- NALANDA
(BIHARSHARIFF)

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Rakesh Kumar Tufani @ Rakesh Kumar Tufan Son of Ram Lal Prasad Resident
of Mohalla Ambar Sitiral Sangat Gali, Biharsharif Nalanda, Police Station-
Biharsharif, District- Nalanda.

.... Petitioner

Versus

1. The State of Bihar
2. Nand Kishore Prasad Son of Atwar Mahto Resident of Village Kebai Bigha,
Police Station - Noorsarai, District- Nalanda.

.... Opposite Parties

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Appearance :

For the Petitioner/s : Mr. Binit Kumar
Mr. Raj Kishor Prasad
For the Opposite Party/s : Mr. Mukesh Kr. Singh, A.P.P.
Mr. Anil Kumar - 1

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CORAM: HONOURABLE MR. JUSTICE RAKESH KUMAR
ORAL JUDGMENT
Date: 29-07-2016

Heard Sri Binit Kumar, learned counsel, who was assisted
by Sri Raj Kishor Prasad, learned counsel for the petitioner, learned
Addl. Public Prosecutor as well as Sri Anil Kumar – 1, learned counsel,
who has appeared on behalf of son of the informant.

2. The sole petitioner 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 07-09-2013 passed
by Sri R.V.S. Parmar, learned Judicial Magistrate 1st Class, Nalanda at
Biharsharif in G.R. Case No. 1474 of 2011 (arising out of Bihar P.S. Case
No. 144 of 2011) registered for the offence under Sections 406, 420,
467, 468, 471 and 34 of the Indian Penal Code. By the said order, the

learned Magistrate has rejected the petition filed for discharge under Section 239 of the Cr.P.C. on behalf of petitioner.

3. Learned counsel for the petitioner submitted that without any specific allegation, case was instituted against the petitioner. Earlier, after order of cognizance, petitioner had approached this Court by filing a quashing application, which was dismissed with liberty to the petitioner to raise points before the court below at appropriate stage. It was submitted by learned counsel for the petitioner that at the time of charge, petitioner filed discharge petition, however; the learned Judicial Magistrate by its impugned order rejected the discharge petition, only on the ground that in this case, order of cognizance was passed by the learned Chief Judicial Magistrate. It was argued by learned counsel for the petitioner that if the statute gives liberty to the petitioner to file a petition for discharge, the learned Magistrate at the time of exercising such power was required to exercise its power independently. However, in this case, the learned Magistrate had not exercised its power under Section 239 of the Cr.P.C. and rejected the petition only on the ground that earlier in this case, cognizance order was passed by the learned Chief Judicial Magistrate.

4. Learned Addl. Public Prosecutor as well as learned counsel for the son of the informant had tried to persuade the Court that on merit, there is specific case against the petitioner.



5. Besides hearing, I have also perused the materials on record. Without going into the merit of the case, the Court is persuaded to interfere with the order only on the ground that the learned Magistrate has not exercised his power under Section 239 of the Cr.P.C. independently. The order makes it clear that he had rejected the discharge petition only and only on the ground that in this case, cognizance order was passed by the learned Chief Judicial Magistrate. The Court is of the opinion that once statute provides jurisdiction to concerned court to examine the petition for discharge, the concerned court is to exercise its power without being influenced by any other order.

6. The order of cognizance was passed after submission of police report. At that very time, it was not required for the learned Magistrate to go into the detail, but once after supply of police paper to accused persons at the stage of charge, a petition for discharge is filed, it is statutory duty on the part of the learned Magistrate that he, without being influenced by the earlier order of the cognizance, will examine the petition with open mind without being influenced by order of cognizance. Since in the present case order rejecting discharge petition was passed on the ground of order of cognizance, the Court is of the opinion that order rejecting discharge petition is liable to be set aside.

7. Accordingly, the order dated 07-09-2013 passed in G.R.

Case No. 1474 of 2011 (arising out of Bihar P.S. Case No. 144 of 2011) by the learned Judicial Magistrate 1st Class, Nalanda at Bihar Sharif is, hereby set aside and matter is remitted back to the learned Magistrate to examine the matter and pass order afresh. Learned Magistrate may pass appropriate order within a period of two months from the date of receipt/production of a copy of this order.

8. The petition stands allowed.

(Rakesh Kumar, J.)

Anay

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	01.08.2016
Transmission Date	01.08.2016