

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.32150 of 2014

Arising Out of PS.Case No. -1860 Year- 2011 Thana -SAMASTIPUR COMPLAINT CASE
District- SAMASTIPUR

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1. Rakesh Kumar Chadory @ Rakesh Kumar Choudhary S/o Surendra Prasad Choudhary Resident of Mohalla - Mulchand Road, P.S. Samastipur (T), District - Samastipur

2. Md. Mahboob @ Mahboob Alam S/o Nurul Hoda Resident of village - Ramnagar, P.S. Warisnagar, District - Samastipur Petitioners

Versus

1. The State of Bihar

2. Ravi Kumar Kanojia S/o Late Ram Prashad Kanojia Resident of Mohalla Station Road Ward No.21, P.S. Samastipur (Town) District – Samastipur
.... Opposite Parties

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Appearance :

For the Petitioners : Mr. Bijay Bhushan Prasad, Adv.

For the Opposite Parties : Mr. Anil Kr.Singh 1(App)

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CORAM: HONOURABLE MR. JUSTICE GOPAL PRASAD

ORAL ORDER

5 30.06.2016 Heard the learned counsel for the petitioners and the State.

This is an application for quashing the order, dated 24.01.2014, passed in Criminal Revision No. 241 of 2013 by the Session's Judge, Samastipur, confirming the order, dated 14.02.2013, passed by Sri Ravindra Kumar, Judicial Magistrate, 1st Class, Samastipur, in C. R. No. 1860 of 2011 by which he has dismissed the complaint under Section 203 of the Criminal Procedure Code.

The petitioners filed a complaint alleging therein that he is a shop keeper of a shop situated at north of Station of Road in which he used to work as Dry Cleaner. Rakesh Kumar Choudhary, accused no. 1, threatened to remove his shop on which there was verbal altercation on which accused no. 1 of the complaint petition called the other accused 2, 3 and 4 and ordered to assault, then, accused persons started assaulting the



complainant. The complainant, then, managed to flee away and entered into his house, then, accused persons entered into the house of complainant and assaulted him and when the wife of the complainant come to his rescue, she was also misbehaved and on protest by complainant, the complainant was dragged out of the house, abused and Rs.5,000/- was snatched from his pocket and, further, snatched golden chain from his neck. The matter was reported to the local Police Station, but, in vain as Rakesh Kumar Choudhary was present at the Police Station from before and at his instance the police instead of lodging the case sent the complainant to jail by lodging false case against him and since then he is in jail. The complainant informed his lawyer from jail and instructed him to file the complaint case, consequently complaint filed under Sections 323, 324, 379, 354 and 352 of the Penal Code and 3(x)(iv) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989.

After filing the complaint, the complainant was examined on solemn affirmation and the witnesses were also examined and, thereafter, the Judicial Magistrate found that there is no material dismissed the complaint under Section 203 of the Criminal Procedure Code by order, dated 15.12.2012.

Thereafter, criminal revision was preferred, bearing Criminal Revision No. 66 of 2013 against the order, dated 15.12.2012, passed by the Judicial Magistrate, 1st Class, Samastipur. The revisional Court allowed the revision on the ground that there is counter case and, further, fact that the complainant has fully supported the prosecution case regarding assault and theft and remanded the case to the Magistrate for further enquiry. The learned Magistrate, after remand of the case

and in the light of the order of the Session's Judge, dated 07.02.2013, passed in Criminal Revision No. 66 of 2013, perused the complaint, statement of the complainant on solemn affirmation and statement of the witnesses and found that there is prima facie case and took cognizance under Sections 323, 324, 379, 354 and 352 of the Penal Code as well as under Section 3(x) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, by order, dated 14.02.2013.

Again, revision petition, being Criminal Revision No. 241 of 2013, preferred against the order, dated 14.02.2013, passed by the Judicial Magistrate, 1st Class, Samastipur, in Complaint R. No. 1860 of 2011. The said revision petition was dismissed by order, dated 24.01.2014, holding that there is no illegality in the impugned order, taking cognizance by the Magistrate as the Court after perusing the evidence, available on record, has found prima facie case and has taken cognizance in pursuance of the direction issued by the revisional Court.

The learned counsel for the petitioners has challenged the order of the revisional Court dismissing the revision confirming the order of the Judicial Magistrate taking cognizance on the ground that after the order of remand, dated 07.02.2013, the trial Court without entering into the further enquiry and without recording any further statement of the witnesses, passed the order taking cognizance on the same material of the earlier enquiry, hence, it amounts to review of the earlier order. The criminal Court has no power to review its order, hence, the order taking cognizance on same material is not sustainable and has placed reliance on a decision reported in **2012 (2) P.L.J.R., 652 (Vidya Bhushan Pandey Vrs. The State of Bihar)** where it has been

held that if a revisional Court remands a case for further enquiry after setting aside the order of dismissal of complaint under Section 203 of the Criminal Procedure Code, then, the learned Magistrate is required to go for further enquiry by calling the witnesses and recording the evidence and then on further enquiry pass order taking into consideration the statement of the witnesses on further enquiry and any order taking cognizance without recording evidence in further enquiry on the basis of same material on which the complaint was dismissed is amount to review of earlier order which can not sustain in law.

The learned counsel for the petitioners, further, contends that the learned Magistrate after remand of the case while ordered for issuing process after taking cognizance did not give any reason for taking cognizance, hence, order taking cognizance suffers from infirmity and has placed reliance on a decision reported in **2008 (4) P.L.J.R., 380 (Buwaneshwar Tanti & Anr. Vrs. The State of Bihar & Anr.)**.

It has, further, been contended, but, there is no allegation in the complaint that the abuse made in the full public view to attract the provision of Section 3(x) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, and reliance has been placed upon a decision reported in **2000 (1) P.L.J.R., 571 (Chandrama Singh & Ors. Vrs. The State of Bihar & Anr.)**.

A revision provided under Sections 397 and 398 of the Criminal Procedure Code against the order passed by the Judicial Magistrate provides power to order enquiry and it has been mentioned that on examination of any record under Section 397 of the Criminal Procedure Code or otherwise the High Court



or the Session's Judge may direct the Chief Judicial Magistrate by himself or by any other Magistrate subordinate to him to make enquiry and the Chief Judicial Magistrate may himself make or direct any subordinate Magistrate to make, further, enquiry in complainant which has been dismissed under Section 203 of the Criminal Procedure Code or under sub section (4) of Section 204 of the Criminal Procedure Code. However, in this regard, the Section 398 of the Criminal Procedure Code, 1973 is paramateria with Section 436 of the Criminal Procedure Code, 1898. However, further, enquiry directed to a subordinate Court means to re-consider for either dismissing the complaint or charging the case as the case may be should be again considered and an appropriate order may as a result of fresh consideration. Reliance has been place on a decision of Division Bench reported in **A.I.R. 1938 Patna, 369 (Udit Narayan Patwari & Ors. Vrs. Emperor)**. A Division Bench of this Court held that “the order of the superior Court to an inferior Court to hold further enquiry on a complaint, which has been dismissed under Section 203 of the Criminal Procedure Code has acquired what is called a technical meaning. It simply means reconsideration. What step is to be taken thereafter depend upon the circumstances of the case. What step is to be taken thereafter will depend upon the circumstance of the case, a Magistrate in it's discretion may in that case hold an enquiry under Section 202 of the Criminal Procedure Code, but, in case in which the complaint has been dismissed after complete enquiry, i.e., statement of complainant on solemn affirmation and statement of witnesses it is obvious that the case is one in which the order of the superior Court for further enquiry can only be complied with by putting the case upon the trial and no further

enquiry under Section 202 of the Criminal Procedure Code required.

Hence, having regard to the facts and circumstances of the case, at hand, since the learned Magistrate after full enquiry, i.e., after examination of the complainant on solemn affirmation and the witnesses on oath has dismissed the complaint and the superior Court found that there is material and remanded the case for further consideration, then, the learned Magistrate has passed order issuing processes after taking cognizance does not suffer from any infirmity and passing order in pursuance of order of revisional Court does not amount to review and the decision reported in **2012(2) P.L.J.R., 652** (supra) is an order passed per incurium as has not taken into consideration the Division Bench's judgment of the Patna High Court reported in A.I.R. 1938 Pat, 369 (supra).

In decision reported in **A.I.R. 1954, Patna, 441 (Shyamlal Ruia & Anr. Vrs. State & Anr.)** it has been held that the expression further enquiry has come to a technical meaning and is simply means reconsideration of the material by Magistrate. A Magistrate when directed to hold further enquiry under Section 436 of the Criminal Procedure Code by the superior Court is not bound to hold further enquiry under Section 202 of the Criminal Procedure Code. The matter when comes back to Magistrate for further enquiry means it is for reconsideration, he can, therefore, held an enquiry under Section 202 of the Criminal Procedure Code or if he considers that enquiry already done he can issue processes under Section 204 of the Criminal Procedure Code without any enquiry at all, and held the Magistrate issuing processes against the accused without any enquiry after receiving the order of the

learned Additional Sessions Judge for further enquiry, he has not acted illegally.

In decision reported in **1968 Cr.L.J., 1257 (Abu Bakkar Vrs. Belal Sheikh)** it has been held that the order of a superior Court to hold further enquiry into a complaint, which has been dismissed under Section 203 of the Criminal Procedure Code has a technical meaning. It simply means reconsideration, but, what more step has to be taken, thereafter, depends on the circumstances on each case. If, further, enquiry has been directed into a complaint, which has been dismissed soon after the examination of the complainant on solemn affirmation the order for further enquiry can be carried out by examining the witness cited by the complainant. In a case where the complaint has been dismissed after a full enquiry such order can only be complied with by issuing process against the accused persons.

In decision reported in **1956 (4) B.L.J.R., 575 (Brijnath Sahai Vrs. Babu Lal & Ors.)** where it has been held that the order of a superior Court to an inferior Court to hold a further enquiry into a complaint which has been dismissed under Section 203 of the Criminal Procedure Code procedure has been acquired, what may be called as a technical meaning, it means a reconsideration. Any complaint which has been dismissed the nature of reconsideration will depend on the circumstance of each case. In a case where complaint has been temporarily dismissed under Section 203 of the Criminal Procedure Code without an enquiry the discretion of the direction to further enquiry may well meaning that a judicial enquiry should be held to be the complaint is dismissed. However, where a Judicial Magistrate enquiry was held and found the complaint was dismissed under Section 203 of

the Criminal Procedure Code and the superior Court and held that the order of dismissal was wrong and that the accused persons should be put on trial the direction for further enquiry can only be complied with by putting the accused persons on trial.

It is further relevant to quote paragraphs 8 and 9 of decision reported in **(2010) 10 S.C.C., 798 (Subarta Das Vrs. State of Jharkhand & Anr.)**

“8 : The learned counsel for the petitioners submitted that the Chief Judicial Magistrate had committed an error in recalling the witnesses and examining them afresh after the matter was remanded back to him for further enquiry. It was contended that direction for further enquiry could not be taken to mean that Magistrate had to record afresh the deposition of the witness already examined. Inasmuch as the Magistrate has done so, in the present case, he committed a mistake that was sufficient to vitiate the order.”

“9 : The matter was noticed by us earlier had been remanded back to the Chief Judicial Magistrate to hold a further enquiry. That direction did not necessarily obliged the Magistrate to record any further evidence in the case. The nature of enquiry was in the discretion of Magistrate which may or may not have included further evidence on behalf of complaint. The Magistrate could without recording any further evidence in the matter reappraised the averment made in the complainant and the material already on record to determine that a prima facie case

was made out against the accused or not.”

Hence, taking into consideration the facts and circumstances of the case, at hand, it is apparent that the complaint was dismissed after full enquiry examining the complainant as well as the witnesses and the Magistrate dismissed the complaint under Section 203 of the Criminal Procedure Code. However, on revision the Session's Judge finding that there is material in the record of complaint case and set aside the order and remanded back for further enquiry. It is apparent that remanding the case for further enquiry has the technical meaning, hence, in the facts and circumstances of the case, Magistrate issued process on the same material is well within jurisdiction as he is not required to go for further enquiry by calling the witness and recorded their statement. This view is supported as discussed in various decisions reported in **A.I.R. 1938 Pat, 369, 1956 (4) B.L.J.R., 575 and (2010) 10 S.C.C., 798** (supra). However, a decisions reported in **2012 (2) P.L.J.R., 652** (supra) holding decision given by the single Bench of Patna High Court decided that taking cognizance after remand in same material is not sustainable as it amounts to review is apparently a decision per incurium has not taken out consideration the earlier decision on the point of the Hon'ble Patna High Court, reported in **A.I.R. 1938 Pat, 369, 1956 (4) B.L.J.R., 575 and (2010) 10 S.C.C., 798** (supra).

More, when the decision of the Supreme Court reported in **(2010) 10 S.C.C., 798** (supra) where it has been held that after the remand of the case, the Magistrate could have recorded reappraising the averments made in the complaint and the material already on record, but, determine whether a prima facie case was made out against the accused persons, hence, there

is nothing wrong in issuing processes on the basis of the material on record.

The learned counsel for the petitioner has placed reliance upon decision reported in **2000 (1) P.L.J.R., 571** (supra) and submitted that the offence under Section 3(x)(ii) is not made out as abuse is in house and not in public place. The fact of the case reported in **2000 (1) P.L.J.R., 571** (supra) is that the servant of the petitioner demanded from petitioner his six months salary, which was due at the rate of Rs.500/- per month, and wanted leave for going to his home and on which petitioner said he has no money and not prepared to grant leave. The complainant, then, offered to finish the work and asked for entire dues on which all accused persons who were family members abused the complainant by using the term Harijan and on order of Chendrum Singh he was assaulted by Hasua causing injury below neck. It is alleged that the occurrence took place in the house, hence, it was held that as per the complaint, itself, the occurrence took place inside the house and there was no occasion that the occurrence was taken place in full public view, hence, offence under Section 3(x) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, the fact of the case, at hand, is quite different as there is specific allegation that complainant was dragged from house to the out side and abused by calling caste name.

However, having regard to the facts and circumstances of the case, at hand, there is specific allegation that the complainant was dragged from the house outside and he was then abuse by calling caste name probably of having been seen by public may not be ruled out. The reliance has, further, been placed



on Bhajan Lal's case reported in **A.I.R. 1992 S.C. 604 (State of Haryana Vrs. Bhajanlal)** that since it is a case of case and counter case and the complaint filed subsequent to filing of case by the appellant so the proceeding was counter blast to the proceeding initiated by appellant, hence, this Court in exercise of power under Section 482 of the Criminal Procedure Code can well quash the complaint. However, having regard to the fact that there is allegation of assault and snatching of the money and the case is at the initial stage and it is well settled that the jurisdiction under Section 482 of the Criminal Procedure Code has to be exercised sparingly with circumspection the Court should not embark on enquiry whether allegation in the complaint are likely to be established case or not and when the trial Court has found that there is prima facie evidence, hence, it is well settled proposition established by law with a criminal prosecution, if otherwise, justifiable and based on intact evidence does not vitiate on the ground of malafide as held in decision reported in **(1987) 1 S.C.C., 288 (Sheo Nandan Paswan Vrs. The State of Bihar)** and when a prosecution is at the initial stage is asked to be quashed, the best applied principle is whether the unprivileged allegation, as made, prima facie established a case and when the proceeding is manifestly attracted by malafide false vicious charge of the remedy is the person who dishonestly makes false allegation liable to be proceeded. However, this petition has been filed against the order passed by the revisional Court on 24.01.2014 confirming the order taking cognizance by Magistrate on further enquiry no point for consideration of quashing on ground of malafide or quashing of the order taking cognizance under Section 3(x) of the Scheduled Castes and Scheduled Tribes (Prevention of

Atrocities) Act, 1989, taken on ground of not alleged in full public view has been taken, hence, those considerations are not relevant otherwise also.

Hence, having regard to the fact that, I do not find any defect in the order passed by the learned Magistrate and there is no merit in the petition, which is **dismissed**.

(Gopal Prasad, J)

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