

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.21935 of 2013

Arising Out of PS.Case No. -111 Year- 2010 Thana -KHAJEKALLAN District- PATNA

NITESH SANGANERIA @ NITESH SINGHANIA @ NITESH
SANGHARIA @ NITESH SINGHNARIA S/O ANUP KUMAR
SANGANERIA RESIDENT OF 2, SHOBHA RAM BASAQUE LANE,
KOLKATA, P.S.- POSTA, DISTRICT- KOLKATA (W.B.)

.... PETITIONER/S

VERSUS

THE STATE OF BIHAR

.... OPPOSITE PARTY/S

Appearance:

For the Petitioner/s : Mr. Abhinay Raj, Adv.

For the Opposite Party/s : Mr. B.N.Pandey (App)

CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI
ORAL ORDER

3 05-04-2016

Heard learned counsel for the petitioner. State is not present.

Petitioner is aggrieved by an order dated 18.04.2013 passed by ACJM, Patna City relating to Khajekalan P.S. Case No.111/2010 whereby and whereunder prayer made under Section 239 Cr.P.C. on behalf of petitioner has been rejected.

The employees of M/s Jouhari Lal Agrawal Sales Pvt. Ltd. siphoned huge amount for that, Raghvendra Pratap Singh had lodged written report, basis of Khajekalan P.S. Case No.111/2010. Names of some of employees were disclosed therein. Investigation commenced, proceeded and during course thereof, main accused, namely, Vikash Dayama was arrested whose inculpatory extra judicial confessional statement was



recorded by the Investigating Officer as well as his statement before the Magistrate in terms of Section 164 of the Cr.P.C. was also recorded at the behest of Investigating Officer. During course thereof, he had detailed the modas oprendi as well as also disclosed manner of investment of money through different persons. Petitioner happens to be one of them. After concluding investigation, charge sheet was submitted. After cognizance, followed with supply of police paper in terms of Section 207 of the Cr.P.C. and a petition has been filed on behalf of petitioner under Section 239 of the Cr.P.C. which has been rejected, as referred above, hence this petition.

Learned counsel for the petitioner submits that in terms of Section 239 of the Cr.P.C. the Magistrate would have perused the police report having been submitted in terms of Section 173 of the Cr.P.C. Though, the order impugned suggest that such exercise was followed by the learned lower court but, the paragraph which ever been referred in the order impugned i.e. paras-108, 186, 196, 199, 250, 251, save and except 108, 186 none are of much relevance because of the fact that 199 and 250 contain the supervision note which does not happen to be part and parcel of the case diary, Para 291 is the summary of the investigation, Para 196 contains disclosure with regard to obtaining of warrant of



arrest against the accused. Now coming to 108, 186, it has been stated that same contain inculpatory extra judicial confessional statement of co-accused as well as his statement recorded under Section 164 Cr.P.C., namely, Vikash Dayama wherein admittedly name of petitioner visualizes but without any overtact, in casual manner.

At the present moment two fold arguments have been advanced. The first one, inculpatory extra judicial confessional statement of a co-accused for the purpose of framing of charge should not be taken note of as, the aforesaid statement has got no relevancy in the eye of law save and except where there happens to be recovery and further, in terms of Section 31 of the Evidence Act only in that pretext, will be used against the co-accused. Therefore, though inculpatory extra judicial confessional statement of co-accused happens to be on the case diary but without any corroborative material and on account thereof, the same cannot be taken into consideration against the petitioner that too, when it suffers from vagueness.

It has also been submitted that during course of investigation, the I.O. would have traced out whether there happens to be truthfulness in the assertion of the co-accused which, the I.O. failed. That means to say in terms of extra judicial



confessional statement of co-accused, sincere effort would have been taken to trace out connectivity. Otherwise it remains worthless for all practical purpose. In the background that petitioner is not named in the FIR and further, having the allegation not at all substantiated by the I.O. by way of collecting positive material against the petitioner, would set attract prosecution of petitioner.

On account of absence of learned Additional Public Prosecutor which has become a regular feature and for that, the office is directed to serve a copy of the order upon the learned Advocate General for the needful, the matter could not be heard at his end.

The Section 239 Cr.P.C. speaks as follows:-

"Section 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."

The only obligation so prescribed at the present juncture is to be discharged by the Magistrate to see whatever

material has been collected during course of investigation and having been forwarded under Section 173 of the Cr.P.C. suggests the charge to be groundless. That means to say, applicability of any particular penal section is to be verified and substantiated from the material having on the record in terms of Section 173 Cr.P.C. From the order impugned, it is evident that no finding has been recorded by the learned lower court on that very score.

Accordingly, the order impugned is set aside. Petition is allowed. The matter is remitted back of the learned lower court for fresh appraisal whereupon will pass appropriate order in accordance with law.

(Aditya Kumar Trivedi, J.)

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