

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.25945 of 2013

Arising Out of PS.Case No. -166 Year- 2005 Thana -DANAPUR District- PATNA

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Shri Awadhesh Kumar Verma, S/o Late Nagendra Prasad Verma,
Permanent Resident of Village Panchpakri, P.S. Dhaka, District East
Champanan.

.... Petitioner

Versus

The State of Bihar

.... Opposite Party

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Appearance :

For the Petitioner : Mr. Mrityunjay Kumar, Advocate

For the Opposite Party : Mr. Uday Chand Prasad(App)

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR
TRIVEDI
ORAL ORDER

2 20-06-2016 Heard learned counsel for the petitioner and learned
Addl.P.P.

On account of having the prayer of the petitioner
rejected in terms of Sec. 239 Cr.P.C., the instant petition has been
filed challenging the order impugned dated 14.02.2013 passed by
Sri R.K. Singh, Judicial Magistrate, 1st class in Danapur P.S. case
no. 166/2005.

Simple submission has been made on behalf of
petitioner that inspite of having finding of the learned lower court
that no document is available to connect the petitioner, even then
prayer of the petitioner to discharge him, has been rejected. Apart
from this, it has also been submitted that from perusal of the case
diary, it is evident that no seizure of any kind of document has



been made during the course of investigation. Therefore, no charge is liable to be framed for creation of forged document as well as committing forgery in the document or treating the forged document to be genuine one. In likewise manner, it has also been submitted that petitioner had not deceived or induced any person to hand over his property. Therefore, no offence under Section 420 of the I.P.C is made out. Furthermore, there happens to be no entrustment which has been misappropriated by the petitioner. So, no offence under Section 406 of the I.P.C. is made out. Consequent thereupon, no offence wherein cognizance has been taken is made out and therefore, petitioner should have been discharged by the learned lower court itself which, lower court failed and on that very score, the order impugned suffers from illegality and is fit to be set aside.

At the other end, the learned Addl. P.P. opposed the prayer and submitted that from plain reading of the statements of the witnesses in consonance of the finding recorded by the learned lower court, the prayer of the petitioner is found misconceived and is accordingly fit to be rejected.

Section 239 of the Cr.P.C. deals with discharge whenever there happens to be police case triable by the Court of Magistrate. For better appreciation, the same is quoted below :



“ 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. ”

From perusal of Section 239 of the Cr.P.C., it is evident that during the course of consideration of a prayer made on behalf of accused to discharge him, the learned Magistrate has to see the materials having forwarded to him in terms of Section 173 of the Cr.P.C. and further, has to trace out therefrom along with hearing submission made on behalf of rival party to come to a conclusion that the charge so alleged happens to be groundless. This exercise has been subject to consideration by the Hon'ble Apex Court times without number and lastly, it has been held that for that purpose, the Court is not required to see that the aforesaid materials are sufficient for conviction of an accused. Therefore, during the course of consideration of framing of charge, the Apex Court had held that grave suspicion is sufficient to frame charge so that prosecution be able to place sufficient material during the course of trial.

Be that as it may, the learned counsel for the petitioner has submitted photo copy of case diary on the score that the same has been handed over to him in pursuance of Section 207 of the Cr.P.C. wherefrom, it is evident from paragraph 10 and paragraph 11 that apart from informant, though it contain conjoint statements of so many witnesses but they are the victims who had deposited the amount and further the aforesaid amount were digested. Furthermore, they have also stated that the amount were deposited by them even to the petitioner also and so, the prayer of the petitioner in the aforesaid background is found not maintainable and is accordingly rejected.

(Aditya Kumar Trivedi, J.)

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