

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No. 22171 of 2013

Arising Out of PS.Case No. -137 Year- 2007 Thana -MANIGACHI District-
DARBHANGA

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Ram Chandra Jha son of Late Surendra Narayan Jha Resident of Village - Nawada, P.S. - Bahera, District – Darbhanga. Formerly posted as Sub Post Master, Nehra, Sub-Post Office - Nehra, District – Darbhanga.

.... Petitioner

Versus

1. The State of Bihar
2. Anwar Ahmad son of Late Md. Fazale Karib, Resident of Village - Ghunsi, P.S. - Manigachi, District – Darbhanga.

.... Opposite Parties

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Appearance :

For the Petitioner/s : Mr. Barun Kumar Choudhary
For the Opposite Party/s : Mr. D.P.Tiwary, A.P.P.
Mr. Md. Iqbal Asif Niazi

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CORAM: HONOURABLE MR. JUSTICE RAKESH KUMAR

ORAL JUDGMENT

Date: 09-09-2016

Heard Sri Barun Kumar Choudhary, learned counsel for the petitioner, Sri Damodar Prasad Tiwary, learned Addl. Public Prosecutor as well as Mr. Iqbal Asif Niazi, learned counsel for the complainant/opposite party no. 2.

2. The sole petitioner, who at the relevant time, was posted as Sub-Post Master-Nehra, Sub-Post Office - Nehra, District – Darbhanga, has approached this Court by invoking its inherent jurisdiction under Section 482 of the Code of Criminal Procedure, 1973 with a prayer to quash an order dated 26-04-2010 passed by Sri S.K.Mishra, Judicial Magistrate 1st Class, Darbhanga (hereinafter referred to as



‘Magistrate’) in Misc. Case No. 173 of 2009/C.R. No. 1940 of 2009, Tr. No. 2607 of 2010 (arising out of Manigachi P.S. Case No. 137 of 2007). By the said order, the learned Magistrate has taken cognizance of offence under Sections 420, 409, 120(B) of the Indian Penal Code.

3. Short fact of the case is that on 24-08-2007, the opposite party no. 2 had filed a complaint before the learned Chief Judicial Magistrate, Darbhanga, which was registered as Complaint Case No. 1192 of 2007. In the complaint petition, it was alleged that the complainant had asked his son to get a Bank Draft prepared in favour of his another son, who was residing at Delhi, for an amount of Rs. 10,000/- (ten thousand). Thereafter, the said bank draft was issued by Punjab National Bank and same was sent through registered post. The registered cover was presented before the petitioner, who at the relevant time was posted as Sub-Post Master. It was alleged that after handing over envelope containing draft for sending through registry and issuance of receipt by the post office, the said draft was not communicated to his son at Delhi for a long period. After raising suspicion, the complainant tried to ascertain the reason for non-delivery of the said registered cover containing draft. The complainant has disclosed in the complaint petition that he had taken all



effort, but every effort went in vain. Thereafter, he filed a complaint before the Superintendent of Post, Postal Department, Darbhanga and it was informed that steps were being taken to ascertain the fact regarding the non-delivery of the registered envelope. Subsequently, under the Right to Informant Act, the complainant got an information that the draft amount has already been credited to the account of one Deepak Kumar. Thereafter, the complainant filed the present complaint before the learned Chief Judicial Magistrate alleging that the petitioner, in connivance with other accused persons, had misappropriated the amount of the bank draft. The said complaint, after being registered as Complaint Case No. 1192 of 2007, was referred to the police under Section 156 (3) of the Cr.P.C. for registering an F.I.R. and thereafter, an F.I.R., vide Manigachi P.S. Case No. 137 of 2007 was registered for offence under Sections 420, 409, 467, 468, 471 and 120(B) of the Indian Penal Code, in which, petitioner and others were arrayed as accused. During investigation, the allegation against F.I.R. named accused persons were found untrue and final report showing a case 'without clue' was submitted by the police. The learned Magistrate accepted the final report, however; a protest petition was filed by the complainant, which was treated as complaint and an enquiry

was conducted. After enquiry, the learned Magistrate has passed the order of cognizance, which has been assailed in the preset proceeding.

4. Sri Barun Kumar Choudhary, learned counsel for the petitioner assailing the order impugned submits that it is true that at the relevant time i.e. in the year 2007, the petitioner was posted as Sub-Post Master in the Sub-Post Office – Nehra and he, after receiving the closed envelope for registry, had granted receipt to the complainant and in due process, the said envelope was transmitted to the Delhi Post Office. This fact has come during investigation and as such, after finding no clue against the petitioner, the police had submitted final report, vide Chargesheet No. 179 of 2008 dated 31-10-2008. He submits that the said report was also accepted by the learned Magistrate, however; to the reasons best known to the complainant, he proceeded with his protest as complaint case. It has been argued that whatever action was taken by the petitioner, was taken in the capacity of public servant and there was no intention on the part of the petitioner to commit any crime. He further submits that the closed envelope was presented giving address of the addressee and as such, there was no occasion for the petitioner to examine as to within the envelope, what was



there. He submits that if the petitioner was not knowing regarding the contents kept in the envelope, there was no reason for the petitioner to conclude that it was containing a bank draft of Rs. 10,000/-. He further submits that draft was prepared in the name of particular person. Once, it was prepared in the name of son of the complainant, there was no occasion for the petitioner to get the amount of draft credited in his account nor it is a case that draft amount was ever credited to the account of the petitioner. As per learned counsel for the petitioner, during investigation, at least, this fact has surfaced that the envelope, which was presented by the complainant, was transmitted by the petitioner to the Delhi Post Office and thereafter, what had happened, it was not known to the petitioner. The petitioner in the capacity of Sub-Post Master had discharged his duty without any reason to create doubt on his action. This was the reason that police after investigation had exonerated petitioner. According to learned counsel for the petitioner, in such a case, without any cogent material showing involvement of the petitioner, only on the basis of oral evidence, the learned Magistrate was not at all authorised to take cognizance of offence and summon the petitioner and as such, he makes a prayer for quashing of the entire proceeding with order of cognizance.



5. Learned Addl. Public Prosecutor as well as Mr. Iqbal Asif Niazi, learned counsel for complainant have vehemently opposed the prayer of the petitioner. Mr. Niazi submits that the argument, which has been advanced by the petitioner, can well be examined at appropriate stage before the court below. He submits that the petitioner is having liberty to file a discharge petition before the court below at appropriate stage. According to learned counsel for the complainant, the order of cognizance, without any apparent error, may not be interfered with and the petition may be dismissed.

6. Besides hearing, I have perused the materials available on record, including the Lower Court Record. In view of nature of accusation, which has been levelled in the complaint petition, the Court is of the definite opinion that petitioner, without any thorough investigation by the investigating authority, was not required to be proceeded.

7. In this case, for the first time, when complaint was referred to the police, the police thoroughly investigated the case. During investigation, the police had noticed that the envelope containing the draft was received in the Delhi Post Office. Thereafter, ofcourse in this case, the police had failed to conduct proper investigation, but at least once it was

established that the envelope containing draft was received in Delhi Post Office, without any further material, there was no reason to implicate the petitioner. On such oral evidence, the petitioner may not be liable to be prosecuted. In such a case, in which, there is apparently no material implicating petitioner, allowing prosecution will amount to allowing abuse of the process of the court.

8. Accordingly, with a view to prevent abuse of the process of the court, it is necessary to interfere with the impugned order and as such; order impugned i.e. order dated 26-04-2010 passed by Sri S.K.Mishra, Judicial Magistrate 1st Class, Darbhanga in Misc. Case No. 173 of 2009/C.R. No. 1940 of 2009, Tr. No. 2607 of 2010 (arising out of Manigachi P.S. Case No. 137 of 2007), so far as petitioner is concerned, is hereby quashed and the petitioner is discharged from the said proceeding.

9. The petition stands allowed.

(Rakesh Kumar, J.)

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