

IN THE HIGH COURT OF JUDICATURE AT PATNA**Criminal Miscellaneous No.22276 of 2013**

Arising Out of PS.Case No. -47 Year- 2009 Thana -AIRPORT District- PATNA

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1. Manoj Kumar Saraf S/O Late Laxmi Prasad Saraf R/O Shanti Apartment, Frazer Road, P.S.- Kotwali, Town And District- Patna
 2. Sanjay Singh S/O Sri Mittal Singh R/O 32, Vaihav Apartment, Budh Marg, Ps.- Kotwali, Town And District- Patna.

.... Petitioner/s

Versus

1. The State Of Bihar

.... Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Suraj Samdarshi, Advocate

For the Opposite Party/s : Mr. Ganesh Pd.Singh (APP)

CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI**ORAL ORDER**

3 25-04-2016 Heard learned counsel for the petitioners as well as learned APP for the State.

2. Petitioners are aggrieved by an order dated 07.02.2013 passed by Sri Ashutosh Khetan, Judicial Magistrate-1st Class, Patna in Patna Airport P.S. Case No. 47/2009, G.R. No. 3320/09 whereby and whereunder the learned lower court had rejected the prayer made on behalf of petitioners in terms of Section 239 Cr.P.C.

3. Petitioners, who are office bearers of Third Eye Communication Private Limited, have been found violating the order passed by High Court in CWJC No. 2290/1990 by having their hoardings/advertisements displayed in the eastern, western road flank near Gate No.2 of Sanjay Gandhi Jaivik Udyan



covering southern corner of airport road through Patel Chowk as alleged by the informant, Naresh Kumar, Surveyor of Patna Municipal Corporation on the basis of which Patna Airport PS Case No. 47/2009 was registered wherein after completing investigation charge-sheet was submitted followed by order of cognizance. At the stage of framing of charge, a petition for discharge was filed which was rejected by the order impugned, hence this petition.

4. It has been submitted on behalf of petitioners that present prosecution has been launched by the informant with ulterior, *mala fide* intention in the background of extraneous consideration as, the informant was very much aware of the fact that the hoardings/advertisements were affixed/displayed after having due permission and to support the same, relied upon Annexure-2, Letter No. 191 dated 24.03.2006 as well as Annexure-5, Letter No. 1062/C dated 03.07.2006. It has also been submitted that during course of investigation, informant as well as one more witness, an employee of Municipal Corporation have categorically stated that permission was granted but, coming to know about that aforesaid permission was also with regard to the VIP area on account thereof, vide Memo No. 292 dated 13.05.2006 was withdrawn, happens to be mere an eyewash which



has purposely been introduced just to justify the instant prosecution in the background of the fact that vide Annexure-5, Letter No.1062/C dated 03.07.2006, subsequent development after 13.05.2006, petitioners were directed by the competent authority to go ahead with the assigned job, then in that event, no prosecution would lie.

5. The learned lower court instead of perceiving the aforesaid event, rejected the prayer in mechanical manner without judiciously scrutinizing materials available on the record, therefore, the order impugned is fit to be set aside.

6. Learned APP opposed the prayer and submitted that for the present, the court has to perceive a *prima facie* case without conceiving whether the materials so available would ultimately led to conviction. Therefore, the order impugned does not require interference.

7. In order to proper appreciation of the present episode, relevant provisions of Cr.P.C. have to be looked into. From perusal thereof, it is evident that different mode of considerations have been prescribed taking into account the nature of the case. With regard to sessions trial cases, Section 227 of the Cr.P.C. provides an opportunity to the accused to pray before the court for his discharge and due consideration, as required in terms



of Section 227 of the Cr.P.C. is confined to consideration of the record along with documents submitted therewith. Furthermore, an opportunity to respective parties has to be given whereupon, the Court has to perceive whether there happens to be sufficient ground to proceed against the accused.

8. Therefore, in terms of Section 227 of the Cr.P.C., first of all, there should be consideration of the record along with documents and secondly, the Court has to perceive whether there happens to be sufficient ground to proceed. This sufficient ground has been taken into consideration by the Court times without number wherein it has given an elastic meaning to the extent of grave suspicion. This requirement is found remodeled while considering an application under Section 239 of the Cr.P.C wherein not only there should be consideration of the materials which has been placed in accordance with Section 173 of the Cr.P.C. rather an opportunity is also given to an accused to be examined by the Court if it so requires and then, after hearing respective parties, the Court has to perceive whether the charges happens to be groundless.

9. That means to say, under Section 227 Cr.P.C. the Court of Sessions has to perceive whether there happens to be sufficient ground to proceed while at the stage of 239 Cr.P.C., the

Court has to perceive whether charge happens to be groundless and for that, the Court has got an option to examine an accused if it so desires. Whenever an accused is subject to the examination, then in that event, certain admitted materials, if any, having placed at his end, is also to be looked into.

10. From the order impugned, it is evident that learned lower court had rejected the prayer simply on the ground that at the stage of framing of charge, a *prima facie* case has to be seen which, as stated above, is not sole requirement of Section 239 Cr.P.C, rather the Court has to see whether charge/allegation happens to be groundless, and for that, there should be proper exercise.

11. Consequent thereupon, the order impugned is set aside. Petition is allowed. The matter is remitted to the learned lower court to appreciate the ambit and scope of Section 239 of the Cr.P.C. in its right perspective giving both the parties opportunities to place their submissions.

(Aditya Kumar Trivedi, J)

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