

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.49502 of 2012

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Arun Kumar Sinha, S/O Late Bipendra Sharan Prasad of Village- Shakti Nagar Kanhauli, P.S- Mithan Pura, Distt- Muzaffarpur, Presently residing Near Duncan Hospital, Raxaul, Distt- East Champaran.

.... Petitioner/s

Versus

1. The State Of Bihar

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Mahesh Narayan Parwat- Sr. Advocate
 Mr. Sanjeet Deokuliar -Advocate

For the Opposite Party/s : Mr. Jagdhar Prasad (A.P.P.)

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI
ORAL ORDER

06 04-10-2016

Heard learned counsel for the petitioner as well as learned Additional Public Prosecutor.

2. Petitioner, who in his original status was a complainant is aggrieved by part of the order dated 08.07.2012 passed by the S.D.J.M., Raxaul at Motihari in Complaint Case No.198 of 2011, adverse to his interest by way of identifying him along with a witness Rakesh Khanna as an accused.

3. For better appreciation of the submission having been made on behalf of petitioner, brief fact of the case is to be taken note of.

4. Petitioner, who was in-charge of Senior Manager, on account of having the Senior Manager on leave, found excess payment of Rs.1,08,500/- on 11.05.2011, which was detected at the fag end of the working hour and for that, they have made



minute scrutiny of the withdrawal slip and during course thereof, identified one withdrawal slip relating to Khata No.4108001009521215, over which there was proper stamp of Token No. T.-43 and System No.M-125368. It has further been disclosed that the in-charge cashier had made payment. It has also been disclosed that on further query, it was evident that no such account number was belonging to the said branch. In likewise manner, forged number has been put over system. No signature of bank officials were available on the withdrawal slip. Even the signature of passing officer was forged. Then thereafter, it has also been incorporated that concerned officials were informed wherefrom on 16.05.2011, complainant was instructed to file F.I.R. On the same day, written information was filed before the police, but at about 7.00 p.m., the aforesaid information was returned back to the complainant whereupon the aforesaid complaint petition was filed.

5. The learned S.D.J.M., Raxaul at Motihari after entertaining the complaint petition, vide order dated 29.08.2011 directed the S.D.M., Raxaul to enquire into the matter and submit report within three months. As, the report was not submitted within the aforesaid stipulated period, on account thereof, vide order dated 16.05.2012, the S.D.M. was show-caused. The aforesaid report was made available on 28.06.2012 and then

thereafter, as is evident, vide order dated 08.07.2012, the order impugned identified the petitioner including others to be an accused for an offence punishable under Section 420 of the I.P.C. whereupon summoned as a resulted of which, instant petition has been filed on behalf of petitioner.

6. Manifold argument has been raised on behalf of petitioner in order to challenge propriety of the order impugned. The first and foremost argument happens to be that the action having been taken at the end of the learned lower Court was contrary to the spirit of law. The Magistrate, in terms of Section 202 of the Cr.P.C. was competent enough to enquire himself or by a Judicial Magistrate, but in the present circumstance the inquiry has been entrusted to the S.D.M., which ought not to have and further, it has also been submitted that in case so ordered in terms of order dated 29.08.2011, it should have been an investigation. It has further been submitted that there happens to be clear cut distinction while proceeding ahead under the banner of inquiry or investigation and for that, preferred Section 2(g),(h). Therefore, as the initial order dated 29.08.2011 happens to be contrary to the spirit of law and on account thereof, the report so submitted by the S.D.M. would not have been taken into consideration.

7. It has further been submitted that from the order impugned, it is evident that complainant/ petitioner was not at all



given an opportunity to explain the circumstances whereunder report could not be relied upon. Mere presentation of report would not have enable the learned Magistrate to proceed ignoring the status of the petitioner to be that of complainant and further, an aggrieved. Furthermore, it has also been submitted that once report was adverse to the interest of the petitioner, then in that event, an opportunity should have been given to the petitioner/ complainant, who at that very moment, was continuing with his status as complainant and that being so, non-providing an opportunity to resist the report, is found against the principle of natural justice.

8. It has further been submitted that by the order impugned, the learned lower Court would not have arrayed the petitioner as an accused in the background of the fact that in terms of Section 202 of the Cr.P.C. an investigation was to be conducted. The provisions for arraying a third party as an accused is only available in terms of Section 319 of the Cr.P.C., which is attracted only with regard to an inquiry or trial. Because of the fact that neither the stage was of inquiry nor trial, therefore, Section 319 of the Cr.P.C. was not at all attracted. Once not attracted, petitioner would not have been arrayed as an accused. So, submitted that taking into consideration the cumulative legal effect as submitted above, the order impugned did not justify its prevalence whereupon, is fit to be set aside.

9. The learned Additional Public Prosecutor opposed the prayer and submitted that the order impugned is in accordance with law, hence did not attract interference.

10. No other provision is available, save and except Section 200 of the Cr.P.C. whereunder a complaint is entertainable. Apart from having some sort of exception relating to the complaint in case, having been filed by public servant acting or purporting to act in the discharge of his official duty, or a Court has made the complaint and further, had taken cognizance but before issuance of process needs prima facie material to substantiate as well as to identify the culprit, and during said course, two options are found available, the first one to proceed with on its own or to transfer in terms of Section 192 Cr.P.C. and at both occasion, either enquire into the matter or to direct investigation, which would be performed by an other than Judicial Magistrate. The sole purpose for an enquiry to be conducted under Section 202 Cr.P.C. is to ascertain truthfulness of the allegation whether prima facie case for issue of process is made out or not. In order to properly appreciate the submission having been raised on behalf of rival parties, it looks desirable to quote Section 202 of the Cr.P.C.:-

“202. Postponement of issue of process.



(1) Any Magistrate, on receipt of a complaint of an offence of which he is authorised to take cognizance or which has been made over to him under section 192, may, if he thinks fit, postpone the issue of process against the accused, and either inquire into the case himself or direct an investigation to be made by a police officer or by such other person as he thinks fit, for the purpose of deciding whether or not there is sufficient ground for proceeding: Provided that no such direction for investigation shall be made,--

(a) where it appears to the Magistrate that the offence complained of is triable exclusively by the Court of Session; or

(b) where the complaint has not been made by a Court, unless the complainant and the witnesses present (if any) have been examined on oath under section 200.

(2) In an inquiry under sub- section (1), the Magistrate may, if he thinks fit, take evidence of witnesses on oath: Provided that if it appears to the Magistrate that the offence complained of is triable exclusively by the Court of Session, he shall call upon the complainant to produce all his

witnesses and examine them on oath.

(3) If an investigation under sub- section (1) is made by a person not being a police officer, he shall have for that investigation all the powers conferred by this Code on an officer- in- charge of a police station except the power to arrest without warrant.

11. Having conjoint reading of Section 200 as well as 202 of the Cr.P.C., it is evident that the relaxation having been given at the stage of Section 200 to the extent of non-examination of complainant on Solemn Affirmation is found duly covered under Section 202 of the Cr.P.C. and that being so, it is expected at the end of the learned Magistrate to have recorded Solemn Affirmation of the complainant and further, instead of identifying the offences whereunder proposed accused was to be summoned, may proceed either to enquire itself or to direct for investigation, which should be otherwise than the Judicial Magistrate. It happens to be post cognizance event. So, the approach of the learned lower Court directing investigation without examining the complainant on Solemn Affirmation appears to be contrary to law. Furthermore, once the investigation report became available before the learned Magistrate, then in that event, the learned lower Court should have given an opportunity to the petitioner/ complainant to address the Court which, from the order impugned

is found silent as the investigation report may or may not be accepted. That being so, the order impugned has been passed without affording an opportunity to the petitioner/ complainant which ought to have been given, more particularly in the background of the fact that the aforesaid report was adverse to the interest of the complainant and further, at that very moment, petitioner/ complainant would have been in a position to convince the Court whether the report was acceptable or not. Had there been such an opportunity available before the petitioner/ complainant and further, would have succeeded in convincing the Court relating to rejection of the report aforesaid, then in that event, the learned lower Court certainly would not have summoned the petitioner arraying him as an accused.

12. In the peculiar facts and circumstances of the case, the order impugned is set aside. Petition is allowed.

(Aditya Kumar Trivedi, J)

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