

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.9615 of 2013

Arising Out of PS.Case No. -1510 Year- 2010 Thana -SAHARSA COMPLAINT CASE District- -

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Darogi Prasad Yadav, Son of Late Jamun Yadav, Resident of Village -
Mokma, P.S. Basnahi, District - Saharsa

.... Petitioner

Versus

1. The State of Bihar
2. Khushi Lal Mehta, Son of Late Jibli Mehta, Resident of Village -
Mokma, P.S. Basnahi, District - Saharsa

.... Opposite Parties.

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Appearance :

For the Petitioner : Mr.

For the Opposite Parties : Mr. Rana Randhir Singh (App)

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CORAM: HONOURABLE MR. JUSTICE GOPAL PRASAD
ORAL ORDER

8 12-04-2016 Heard learned counsel for the petitioner and learned
counsel for the opposite party.

2. This is an application for quashing the order dated
08.06.2012 passed by Shri Chanchal Kumar Tiwari, learned
Judicial Magistrate, 1st Class, Sharsa, in Complaint Case No.
1510C of 2010 by which he has ordered to issue summon against
the accused person after taking cognizance for offence under
Sections 465, 471 and 34 of Indian Penal Code.

3. The fact of the case is that a complaint was filed
alleging therein that Bajdawa has been forged by impersonating
some persons as Rasik Lal Mehta in whose name land stand and
said complaint was filed by the complainant who alleged to be



brother-in-law of Rashik Lal Mehta. The said complaint was sent for institution of F.I.R. for offence under Section 156 (2) of Cr.P.C. on the basis of which Saharsa P.S. Case No. 32 of 2003 was registered. After investigation, the police filed Final Form showing therein the case is false. The complainant then filed a protest petition and learned Judicial Magistrate after receipt of the Final Form heard the informant's lawyer and took cognizance for offence under Sections 467, 468, 469, 471, 420, 323 and 34 of Indian Penal Code with a direction to issue summon against the accused persons. The said order taking cognizance was challenged in revision before the Sessions judge.

4. The Criminal Revision was allowed holding "I find that in the impugned order there is no mention about there being any material or statement of any witness or any fact that Rashik Lal Mehta had not executed Bazdawa deed in favour of petitioner/accused Darogi Prasad Yadav, on the basis of which it may be concluded that the police wrongly filed Final Form in the case showing the case to be civil dispute. As such, the learned Chief Judicial Magistrate has erred in taking cognizance on the basis of police report and the case diary and the F.I.R. specially when there was no material in the case diary to contradict the police report and support the alleged allegation made in the



F.I.R./complaint. To take cognizance in accordance with Section 190(b) the learned Chief Judicial Magistrate, Saharsa, was legally bound to base his finding and discretion only on the F.I.R. and the case diary. Clearly the case diary does not contain any evidence/statement or inquiry report in proof of forgery of the Bazdawa deed and impersonation of Rashik Lal Mehta. Hence, the learned Chief Judicial Magistrate, Saharsa, has got no basis and reasons to take cognizance of the case in accordance with Section 190(b) of Cr.P.C.....”

5. Learned Sessions Judge further observed that “if the learned Chief Judicial Magistrate had to take cognizance on the basis of information through petition of Rashik Lal Mehta then he should have accepted the Final Form (Police Report) filed by the police and to take cognizance on the said information of Rashik Lal Mehta stating clearly that he has taken cognizance according to the provision of Section 190(c) of Cr.P.C. One more recourse was also available to the learned Chief Judicial Magistrate to accept the Final Form filed by the police and allowed the informant/complaint to peruse his case on the basis of his complaint and protest-complaint. After receipt of the police report after investigation under Section 156(3) of Cr.P.C....” Therefore, allowed the Criminal Revision setting aside the impugned order



dated 23.03.2005 passed by the learned Chief Judicial Magistrate and further directed that learned Lower Court/Chief Judicial Magistrate is legally bound to recall the record from the transferee Magistrate reconsider the Police Report and the case diary to pass appropriate legal order in accordance with law and in doing so all the aforesaid three recourses are open for him to take appropriate step and pass order in accordance with law.

6. After receipt of the police report the Magistrate has three open options either to take cognizance and issue notice under Section 204 of Cr.P.C. on the basis of material on record and the case diary or dismiss the complaint under Section 203 of Cr.P.C, or to direct further investigation. The other recourse that learned Magistrate was to accept the Final Form filed by the police and allow the informant/complainant to present his case on the basis of complaint or on protest-complaint.

7. After remand of the case, the learned Magistrate proceeded on the complaint accepted the Final Form in view of order passed by the Revisional Court that there is no sufficient material in the case diary and proceeded on the petition filed by the informant that protest petition was already on record and case be proceeded on the basis of complaint and protest-cum-complaint petition and therefore, the case was transferred under Section 192

of Cr.P.C. to the court of Judicial Magistrate, Saharsa. Thereafter, recorded the statement of complainant and the witnesses and passed the impugned order.

8. The impugned order was in “perused the record, from perusal of the record it appears that there is sufficient material on record to make out a prima facie case under Sections 465 and 471 read with 34 of Indian Penal Code 1860 against all the accused persons named in the complaint petition.

Let the process be issued against all the accused persons named in the complaint petition for offence under Sections 465, 471 read with 34 of the Indian Penal Code.....”

9. Learned counsel for the petitioner has challenged the order submits that impugned order issuing process after taking cognizance has been passed after remand of the case with a direction to pass order after due consideration. It is submitted that order by the learned Judicial Magistrate is cryptic and apparently appear to be non-application of judicial mind.

10. Learned counsel for the opposite party, however contend that the court proceeded on the basis of complaint and passed the impugned order issuing process after taking cognizance on the basis of complaint. It is further submitted that no reason is required to be given for taking cognizance under Section 204 of

Cr.P.C. and reason has only require under Section 203 of Cr.P.C. by dismissing the complaint.

11. However, taking into consideration the fact that order taking cognizance is to effect the right of the accused and there must be material on record for taking cognizance and same was agitated. Earlier the case was proceeded lodging of the F.I.R. and after submission of the charge sheet, order taking cognizance was challenged before Revisional Court. The Revisional court set aside the order taking cognizance after due consideration of the fact and on perusal of entire discussion of the material collected in the case diary holding that there is no material in the entire case diary, but on the basis of which cognizance is required to be taken for offence under Sections 465 and 474 of Indian Penal Code and remanded the case to consider the police report and case diary and pass appropriate order in accordance with law and in consequence the learned Magistrate perused the case diary even found there is no sufficient material for accepted the Final Form filed by the police, but proceeded on protest-cum-complaint and examined the complainant and witnesses and thereby proceeded on the complaint.

12. However, from perusal of the impugned order it appears that impugned order has been passed non-application of

mind without any indication, without any material or even allegation in the complaint. It is true that the word used in impugned order that perused but from impugned order, it does not reflect that the order was passed with due application of mind.

13. Having regard to the fact order impugned passed without any application of mind. Hence, impugned order dated 08.06.2012 is hereby set aside.

14. Let the case be remanded back to the lower court to pass a reasoned order after due application of mind.

15. With this observation, the petition is disposed of.

m.p.

(Gopal Prasad, J)

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