

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.28348 of 2013

Arising Out of PS.Case No. -293 Year- 2011 Thana -PATLIPUTRA District- PATNA

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1. Ram Yatan Prasad, S/o late Deo Narain, Registered Licensee P.M.C. 30/09-10, resident of mohalla 21, S.K. Colony, Sector-K, Kankarbagh, Police Station Patrakar Nagar, District Patna.

.... Petitioner/s

Versus

1. The State of Bihar

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Rajendra Prasad Singh, Sr. Advocate with
Mr. Umesh Prasad, Advocate
For the Opposite Party/s : Mr. Atul Chandra, APP

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CORAM: HONOURABLE MR. JUSTICE SANJAY PRIYA

CAV JUDGMENT

Date: 06-02-2017

1. This application under Section 482 of the Code of Criminal Procedure has been filed for quashing the order dated 25.04.2013 passed by the Judicial Magistrate, 1st class, Patna, in G.R. No.09 of 2012 arising out of Patliputra P.S. Case No. 293 of 2011, by which the learned Magistrate has rejected the petition dated 15.03.2013, filed by the petitioner for his discharge.

2. Heard learned counsel for the petitioner and learned APP for the State.

3. It has been submitted on behalf of the petitioner that no offence is made out against him as alleged offence cannot be established on the basis of the materials on record. There is no



chance, at all, of conviction of the petitioner. The petitioner filed the petition annexing all the documents before the learned Court below along with the order of the Hon'ble Court but the Court below rejected the petition dated 15.03.2013 filed by the petitioner by order dated 25.04.2013.

4. Earlier, the petitioner filed Cr. Misc. No.6311 of 2012 for quashing of the First Information Report of the present case. The said case was disposed off by order dated 03.07.2012 with a direction to the petitioner to place the facts before the Investigating Officer, who shall consider the same and file closure report. On 27.09.2012, the petitioner submitted all the relevant orders of this Court along with his petition to the Investigating Officer. The Investigating Officer on 29.10.2012 submitted charge-sheet against the petitioner and others for the offence under Section(s) 420, 467, 468, 471, 120-B Indian Penal Code by making perfunctory investigation. Cognizance of the offence was taken by the learned Magistrate by order dated 29.10.2012 against the petitioner under Section(s) 420, 467, 468, 471, 120-B Indian Penal Code. The petition filed by the petitioner on 15.03.2013 for his discharge under Section 239 Cr. P.C., was rejected by the impugned order dated 25.04.2013.

5. Counsel for the State has submitted that the Court below after considering all the materials and documents produced on



behalf of the petitioner has rejected the petition for discharge filed by the petitioner by the impugned order, which is self speaking order and there is no illegality in the impugned order.

6. From perusal of the impugned order as well as materials available on record, this Court finds that the police after completion of investigation submitted charge-sheet for the offence under Section(s) 420, 467, 468, 471, 120-B Indian Penal Code. The learned Magistrate after submission of the charge-sheet took cognizance against the petitioner on the basis of the materials available against him for the offence under Section(s) 420, 467, 468, 471, 120-B Indian Penal Code by order dated 29.10.2012. The petitioner has filed petition under Section 239 Cr. P. C. for his discharge, which was rejected by the learned Court below on 25.04.2013. The learned Magistrate after discussing various orders passed by this Hon'ble Court and the allegation made by the witnesses against the accused before the police during investigation came to the conclusion that the Court at this stage cannot verify the reliability of the statement made by the witnesses during investigation nor the Court can go minutely into the defence of the accused, which can only be done during the course of trial.

7. The Court at the stage of framing of Charge has not to consider the sufficiency of materials to establish the offence



alleged nor the standard of test, proof and judgment is exactly to be applied at this stage, which is to be applied at the stage of trial.

8. Section 239 of the Code of Criminal Procedure lays down as follows:

“239. When accused shall be discharged.---If, upon considering the police report and the documents send 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.”

9. As such, the accused can be discharged under Section 239 Cr. P.C. by the Magistrate only when the Magistrate upon considering the police report and the documents send with it under Section 173 and making such examination, if any, of the accused as the Magistrate thinks necessary, considers the charge against the accused to be groundless. The Magistrate is not required at the stage of framing of Charge to consider the sufficiency of materials to establish the offence alleged nor the standard of test, proof and judgment is exactly to be applied at this stage, which is to be applied at the stage of trial.

10. Therefore, this Court does not find any illegality in the impugned order by which the learned Magistrate has rejected



the petition dated, 15.03.2013 filed by the petitioner under Section 239 Cr. P. C. for his discharge.

11. Accordingly, this Criminal Miscellaneous application is dismissed.

(Sanjay Priya, J)

J.Alam/-

AFR/NAFR	NAFR
CAV DATE	27-01-2017
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