

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.32959 of 2013

Arising Out of PS.Case No. -126 Year- 2009 Thana -SITAMARHI COMPLAINT CASE District-
SITAMARHI

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Gauri Shankar Sah S/O Sri Sita Ram Sah Resident of Village- Shankarpur, Bindhi,
P.O- Chhatauna, P.S- Piprahi, District- Shivhar.

.... Petitioner

Versus

1. The State of Bihar
2. Roop Narain Singh S/O Not Known Resident of Village + P.O- Kataiya, P.S-
Piprahi, District- Shivhar & Panchayat Sachiv, Gram Panchayat Raj, Mohanpur,
P.S+ Block- Piprahi, District- Shivhar.
3. Amit Kumar, Prakhanda Vikash Padadhikari, At & P.O+ P.S- Piprahi, District-
Shivhar.

.... Opposite Parties

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Appearance :

For the Petitioner : Mr. Harendra Kumar, Advocate.
For the Opposite Parties : Ms. Sangeeta Sharma, APP.

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CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR JHA
ORAL JUDGMENT
Date: 03-04-2017

Heard Mr. Harendra Kumar, learned counsel appearing
on behalf of the petitioner and the learned APP.

2. The petitioner has filed this petition for quashing the
order dated 09.03.2011 passed in Complaint Case No. C1-126/09 by
which the learned Judicial Magistrate, Sheohar dismissed the
complaint petition of the petitioner under Section 203 of the Code of
Criminal Procedure (hereinafter referred to as the 'Code') and the
petitioner further prays to quash the order dated 06.03.2013 passed in
Criminal Revision No. 60/11/25/12 by which the revision petition of
the petitioner against the order dated 09.03.2011 has also been



dismissed.

3. The complainant filed complaint case against Roop Narain Singh, the Panchayat Sachiv and Amit Kumar the Block Development Officer, Piprahi, District- Sheohar. The complainant alleged that on 11.06.2009, he had been to the Block Development Office for Indira Aawas, but Panchayat Sachiv told him that the person who got more marks than the complainant got Indira Aawas. He went to the chamber of the Block Development Officer who asked him to have talk with Panchayat Sachiv. Panchayat Sachiv demanded Rs. 5000/- and on refusal he assaulted the complainant.

4. The learned Judicial Magistrate, Sheohar after perusing the evidence of the complainant and his three witnesses dismissed the complaint petition holding that the evidence of the complainant and his witnesses are inherently contradictory on the point of demand of bribe and on assault. Accordingly the learned Judicial Magistrate, Sheohar did not find prima facie case to proceed against. The petitioner, thereafter, moved in Criminal Revision No. 60/11/25/12 against the order dated 09.03.2011 passed by the learned Judicial Magistrate, Sheohar and the learned Additional Sessions Judge, Sheohar dismissed the complaint petition vide order dated 06.03.2013.

5. Shri Harendra Kumar, learned counsel for the



petitioner submits that learned Judicial Magistrate as well as learned Additional Sessions Judge, Sheohar have traveled beyond their jurisdiction in appreciating the evidence of the complainant and his witnesses in a meticulous way. After enquiry, the Judicial Magistrate, Sheohar is not appreciating the evidence in all its pros and cons. He has to ascertain only as to whether prima facie case to proceed against the accused is made out or not. The yardstick of appreciating the evidence to find out the prima facie case is altogether different than the yardstick of the appreciating the evidence after holding the trial to find out the guilt of the accused but learned Judicial Magistrate, Sheohar scan the evidence in all its pros and cons and learned Additional Sessions Judge, Sheohar has also confirm the order of learned Judicial Magistrate without appreciating the evidence aforesaid. Learned counsel for the petitioner in support of his contention placed reliance on para-6 of the judgment of this Court in case of ***Md. Nisar Alam vs. State of Bihar reported in 1997 (1) PLJR, 653*** which reads as follows:

6. The learned counsel for the petitioners has further placed reliance on a decision of the Apex Court in the case of Pramatha Nath Talukdar vs. Saroj Ranjan Sarkar, A.I.R. 1962 Supreme Court 876 wherein the question involved was entertainment of second complaint after the first complaint had been dismissed. It has been held in the said case that where a complaint is filed and the Magistrate on an enquiry held under Section 202



*takes the evidence offered by the complainant into consideration and comes to the conclusion that there is no ground to proceed, that the evidence is not worthy of credit and that he is not satisfied with the correctness of the complaint, he is entitled to refuse the issue of process and dismiss the complaint under Section 203. There cannot be any dispute regarding the principles laid down by the Apex Court in the said two decisions that a Magistrate has to be satisfied on consideration of the evidence led in enquiry under Section 202 of the Code whether a prima facie case is made out to proceed against the accused persons so as to issue process. If the Magistrate is not satisfied about such prima facie case, he is entitled to dismiss the complaint under Section 203 of the Code. In the present case, the question which arises for consideration is whether the reasons given by the learned Sessions Judge for setting aside the order of the learned Magistrate that the learned Magistrate was not justified in entering into meticulous examination of the evidence is correct or erroneous. At the stage of considering the question of issue of process after enquiry under Section 202 of the Code, the Magistrate has to be prima facie satisfied on the basis of evidence adduced before him that a case is made out for proceeding against the accused. The Magistrate is not to weigh the pros and cons of the evidence at that stage and enter into appreciation of evidence as is done at the trial. The Apex Court in the case of **Kewal Krishna vs. Suraj Bhan and another**, A.I.R. 1980 Supreme Court 1780 while considering the scope of Sections 203/204 of the Code has observed as follows –*

“At the stage of Sections 203 and 204, in a case exclusively triable by the Court of Session, all that the Magistrate has to do is to see whether on a cursory



perusal of the complaint and the evidence recorded during the preliminary inquiry under Sections 200 and 202, there is prima facie evidence in support of the charge levelled against the accused. All that he has to see is whether or not there is “sufficient ground for proceeding” against the accused. At this stage, the Magistrate is not to weigh the evidence meticulously as if he were the trial court. The standard to be adopted by the Magistrate in scrutinising the evidence is not the same as the one which is to be kept in view at the stage of framing charges. Even at the stage of framing charges the truth, veracity and effect of the evidence which the complainant produces or proposes to adduce at the trial, is not to be meticulously judged. The standard of proof and judgment, which is to be applied finally before finding the accused guilty or otherwise, is not exactly to be applied at the stage of framing charges. A fortiori, at the stage of Sections 202/204, if there is prima facie evidence in support of the allegations in the complaint relating to a case exclusively triable by the Court of Session, that will be a sufficient ground for issuing process to the accused and committing them for trial to the Court of Session.

The proposition that in cases instituted on complaint in regard to an offence exclusively triable by the Court of Session, the standard for ascertaining whether or not the evidence collected in the preliminary inquiry discloses sufficient grounds for proceeding against the accused is lower than the one to be adopted at the stage of framing charges in a warrant case triable by the Magistrate, is now evident from the scheme of the new Code of 1973. Section 209 of the Code of 1973 dispenses with the inquiry preliminary to commitment in cases triable exclusively by a Court of Session, irrespective of whether such a case is instituted on a criminal complaint



or a police report. If the Committing Magistrate thinks that it is not necessary to commit the accused who may be on bail to custody, he may not cancel the bail. This has been made clear by the words “subject to the provisions of this Code relating to bail” occurring in clause (b) of Section 209. Therefore, if the accused is already on bail, his bail should not be arbitrarily cancelled. Section 227 of the Code of 1973 has made another beneficial provision to save the accused from prolonged harassment which is a necessary concomitant of a protracted trial. This section provides that if upon considering the record of the case, the documents submitted with it and the submissions of the accused and the prosecution, the Judge is not convinced that there is sufficient ground for proceeding against the accused, he has to discharge the accused under this Section and record his reasons for so doing.”

6. On hearing the submissions of learned counsel for the petitioner and on perusal of the orders impugned, the only question arises as to whether the order of learned Judicial Magistrate, Sheohar as well as learned Additional Sessions Judge, Sheohar suffers from any illegality? Section 203 of the Code of Criminal Procedure (hereinafter referred to as the ‘Code’) reads as follows:

203. Dismissal of complaint. – If, after considering the statements on oath (if any) of the complainant and of the witnesses and the result of the inquiry or investigation (if any) under Section 202, the Magistrate is of opinion that there is no sufficient ground for proceeding, he shall dismiss the complaint, and in every such case he shall briefly record his reasons for so



doing.

7. From perusal of the records, it appears that the complainant also made the Block Development Officer as accused but no allegation is made against the Block Development Officer in the entire complaint petition save and except the fact that the complainant went to the chamber to enquire about non-allotment of Indira Aawas on such the Block Development Officer is said to have asked the complainant to see and have talk with Panchayat Sevak. When the complainant went to Panchayat Sevak he demanded Rs. 5000/- and on refusal by the complainant the Panchayat Sevak is said to have assaulted the complainant. Three witnesses were examined but all the three witnesses give their contradictory statements in their evidence with regard to demand of bribe and assault. Two of the witnesses stated that in their presence no demand was made. One of the witnesses said that the demand was made two days prior to the occurrence in front of the hospital. Learned Judicial Magistrate also called for a report from the Sub-Divisional Magistrate and after perusing all the materials he found no sufficient material to proceed and issue summons against the accused persons. On perusal of the order, it does not appear that learned Judicial Magistrate has scanned or sift the evidence in all its pros and cons and in very meticulous way but from the order itself it appears that on such inherent contradictory



evidence of the witnesses learned Judicial Magistrate, Sheohar has rightly found no prima facie case to proceed against the accused. Even in the judgment on which learned counsel for the petitioner placed his reliance does not help the case of the petitioner. Therefore, I do not find any illegality in the order dated 09.03.2011 passed in Complaint Case No. C1-126/09 and order dated 06.03.2013 passed in Criminal Revision No. 60/11/25/12.

8. Accordingly, this quashing petition is dismissed.

(Prabhat Kumar Jha, J.)

KKSINHA/-

AFR/NAFR	
CAV DATE	
Uploading Date	
Transmission Date	

