

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.37664 of 2015

Arising Out of PS.Case No. -72 Year- 2013 Thana -SAKRI District- MADHUBANI

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Sweta Kumari, Daughter of Ram Bahadur Jaiswal, Resident of Mohalla -
New Bazar, Buxar, P.S. and District - Buxar

.... Petitioner/s

Versus

The State of Bihar

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Bijendra Kumar Singh, Advocate

For the Opposite Party/s : Mr. Pranav Kumar(App)

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CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH
ORAL ORDER

2 01-05-2017

Heard.

The present application has been filed for quashing of the order dated 13.09.2013, passed by the learned CJM, Madhubani, in connection with Sakri P.S. Case No.72/2013, wherein, process has been directed to be issued after cognizance being taken for the offences punishable under sections 414, 34 and 120B of the Indian Penal Code.

Prosecution case is that the informant being the Officer Incharge of Sakari Police Station intercepted one Tata Sumo vehicle parked near Darbhanga Lane Road during patrolling on 15/7/2013/16/07/2013 at 2.30 AM. In the vehicle, two boys and two girls, namely Pankaj Kumar, Prince Kumar @ Ratnesh, Sweta Kumari, the petitioner and Kajal Kumari, were found sitting. One



accused escaped from the scene, whose name was disclosed as Md. Roshan Ahmad, by the apprehended accused. When document with regard to the vehicle in question was demanded, they could not produce any paper. Hence, it was presumed that the accused persons had stolen the vehicle in question and are taking the same to conceal or sell it, which led to registration of Sakri P.S. Case No. 72/2013 dated 16/07/2013, under sections 414 of the Indian Penal Code.

It is submitted by learned counsel for the petitioner that earlier Narpatganj P.S. Case No.193/2013 was registered under sections 395 and 412 of the Indian Penal Code when the vehicle in question was robbed by the miscreants and on conclusion of investigation (final form), the charge-sheet was submitted under sections 395 and 412 of the Indian Penal Code, the petitioner along with co-accused Prince Kumar and Pankaj Kumar were put on trial and were ultimately acquitted, vide judgment dated 18.06.2016, passed by the learned 1st Additional Sessions Judge, Araria, in S.T. No.185 of 2014/T.R. No.27 of 2016, as the prosecution failed to prove the charge against them beyond shadow of reasonable doubt. The present case is an offshoot of the earlier case and which has been brought to the notice of this Court by way of Annexure-2, filed in the



supplementary affidavit.

Hence, it is submitted that since the charge-sheet was submitted under sections 395 and 412 of the Indian Penal Code in the earlier case, which culminated into acquittal, hence, no useful purpose will be served in allowing to continue the proceedings of the present case, since the petitioner has already been acquitted in another case with regard to act in same transaction.

In considered opinion of this Court, the factual aspects of the two cases, which prima facie gets revealed is that initially Narpatganj P.S. Case No. 193/2012 was registered on 15/07/2013, on the basis of the fardbeyan of the informant of that case, i.e, Md. Tuntun, who claimed to be the driver of the vehicle, which has been alleged to have been stolen. Narpatganj P.S. Case No.193/2013 was registered under section 395 I.P.C., while the charge-sheet was submitted under sections 395 and 412 of I.P.C.. The case was committed on 01/02/2014.

Whereas, the instant case under consideration was registered as Sakri P.S. Case No.72 of 2013 dated, 16/07/2013 at 8.30 a.m. under section 414 of the I.P.C. Subsequently, after submission of final form (charge-sheet), process has been directed to be issued after cognizance being taken for the offences punishable under sections 414/34 and 120B of the I.P.C., vide



order dated 13/09/2013, passed by the learned CJM, Madhubani.

Thus, it is apparent on the face of it that the petitioner was aware of both the cases, in which she was being proceeded against. The series of acts, in both the cases, are connected together, so as to form the same transaction. Section 220(1) of the Cr. P.C. adequately deals with the procedure to be adopted in such circumstances.

Section 220 (1) of Cr.P.C. stipulates :-

"If, in one series of acts so connected together as to form the same transaction, more offences than one are committed by the same person, he may be charged with, and tried at one trial for, every such offence."

Apparently, the allegations in both the F.I.Rs., are undoubtedly interlinked and can also be said to be forming part of same transaction. In F.I.R. bearing Narpatganj P.S. Case No.193/2013, the petitioner and others were named as an accused for alleged commission of offence under section 395 of I.P.C., for committing dacoity of the Jeep, whereas F.I.R. bearing Sakri P.S. Case No.72/2013, was registered for offences under sections 414/34 and 120B of I.P.C., wherein it was alleged that the petitioner



and other accused persons were found seated inside the Jeep, at around 2.30 a.m., without any document or reason for justifying their being in possession of the vehicle.

Hence, the allegations in the two F.I.Rs, undoubtedly formed part of the same transaction.

But, it has neither been pleaded in the application of the petitioner, nor it is being suggested so from the materials on record, whether any effort was taken on behalf of the petitioner in the trial arising out of Narpatganj P.S. Case No.193/2013, for being charged with or tried together. Once, the petitioner has allowed the separate proceedings to continue, she cannot now turn around and take the plea, that since she has been acquitted in trial, which arose from act forming part of same transaction, hence, she should also be exonerated of the charges for another act forming part of the same transaction.

While exercising jurisdiction under section 190(1)(b) of the Cr.P.C., the Court taking cognizance of the offence, has to be *prima facie* satisfied about the commission of an offence, on the basis of the police report of such facts. At this stage, the Court cannot make a roving enquiry or meticulous examination of the facts or materials or report brought before it by the Police, rather the court has to only be satisfied that from such materials, *prima*



facie offence is being made out. Such *prima facie* satisfaction of commission of offence is obviously being made out. At this stage, the Court taking cognizance cannot also look into materials, beyond what has been brought before him by way of Police report.

Hence, in considered opinion of this Court, this Court finds no fault in the order taking cognizance, so that the same be interfered with.

Accordingly, this application stands dismissed.

It goes with saying, that the petitioner can raise all such issues in his defence, at appropriate stage, which would be considered in accordance with law, as also in view of the fact that the petitioner has been acquitted in the case which was formally registered and which formed an act in same transaction.

(Dinesh Kumar Singh, J)

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