

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.42652 of 2011

Arising Out of PS.Case No. -11 Year- 2009 Thana -null District- KATIHAR

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1. Bijendra Kumar Choudhary S/O Sri Pitambar Choudhary Resident Of Village -
Bihnagar , P.S.- Pandaul , District - Madhubani .

.... Petitioner/s

Versus

1. The State Of Bihar

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr.

For the Opposite Party/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE SANJAY PRIYA

ORAL JUDGMENT

Date: 12-10-2017

Heard learned counsel for the petitioner and the state.

. This application has been filed for quashing the order dated 10-08-2011 passed by learned Railway Judicial Magistrate, Katihar in Katihar (Purnea) P.S. Case No. 11 of 2009 by which, the learned Magistrate held that the offence alleged against the petitioner cannot be said to be groundless and the case under Section-392 of the Indian Penal Code is made out against the petitioner. The petition for discharge dated 06-04-2011 filed by the petitioner has been rejected and the petitioner along with other accused were directed to appear before the court for framing of charge on 24-08-2011.

Counsel for the petitioner has submitted that there is absolutely no material against this petitioner in the entire case diary.



The court below has committed error of record in mentioning in the impugned order that alleged stolen mobile was recovered from possession of this petitioner. The statement of father of the petitioner was recorded u/S 164 of the Cr.P.C. wherein he has not made any such statement that the aforesaid mobile was used by his son rather he has made statement that he has purchased the mobile from a shopkeeper namely, Ratan Jha. He has also produced valid paper of purchase of the mobile.

Counsel for the petitioner has submitted that on 20-09-2010, the officer-in-charge Rail P.S. investigated the case and submitted an application in the court below making prayer for issuance of warrant of arrest against the petitioner and other accused persons alleging that this petitioner and aforesaid two accused persons have been found using stolen mobile.

Case diary has been received.

Learned APP after looking into case diary has not been able to show any substantial material in the case diary for making such request by the police before the court below that the aforesaid mobile was used by this petitioner. The statement of the father of this petitioner has been annexed with the petition as Annexure-2/1 wherein father of the petitioner has stated that he has purchased the said mobile from shop of Ratan Jha and he produced valid paper in



support of purchase of the mobile. Learned APP further submitted that no TIP was held in this case.

Section 239 Cr. P.C. lays down as follows: When accused shall be discharged: if, upon considering the police report and the documents sent with it under section 73 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.

From perusal of the impugned order, it appears that the court below has rejected the petition of the petitioner u/S 239 of the Cr.P.C. on the presumption that this petitioner was having possession of the mobile which was said to have been robbed from the informant but in the case diary, or in the statement of the father of the petitioner u/S 164 of the Cr.P.C. there is no material to suggest that this petitioner was found in possession of the aforesaid stolen mobile.

Therefore, this court is of the view that there was absolutely no material against the petitioner either in the written report or during course of investigation in the case diary to connect him with the aforesaid offence.

Therefore, the court below was not justified in rejecting



the petition of the petitioner u/S 239 Cr.P.C.

Accordingly, the impugned order dated 10-08-2011 passed by learned Railway Judicial Magistrate, Katihar in Katihar (Purnea) P.S. Case No. 11 of 2009, along with entire criminal proceeding of Katihar (Purnea) P.S. Case No. 11 of 2009 against the petitioner is quashed.

This Cr. Misc. Application is allowed.

(Sanjay Priya, J)

A.K.V./-

AFR/NAFR	AFR
CAV DATE	
Uploading Date	17-10-2017
Transmission Date	17-10-2017

