

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.53963 of 2013

Arising Out of PS.Case No. -275 Year- 2013 Thana -ROHTAS COMPLAINT CASE District-
SASARAM (ROHTAS)

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Shailendra Lal S/O Shri Laxman Lal Resident Of Mohalla Gourixani
Santoshi Maa Path, Street No. 11-A, At And P.O. Sasaram, P.S. Sasaram
(T), District Rohtas.

.... Petitioner/s

Versus

The State Of Bihar

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Ajay Nandan Sahay

For the Opposite Party

No.2 : Mr. Bajrangi Lal

For the State : Mr. kumar Birendra Narayan

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CORAM: HONOURABLE MR. JUSTICE SANJAY PRIYA
ORAL ORDER

- 7 02-05-2017
1. The petitioner seeks quashing the order dated 24.10.2013 passed by the learned Sessions Judge,Rohtas in Cr.Rev. No. 229 of 2013 affirming the order taking cognizance dated 12.07.2013 by the Judicial Magistrate, 1st Class Sasaram (Rohtas) in Complaint Case No.275 of 2013 under Section 406 of the Indian Penal Code as well as under Section 138 of N.I.Act.
 2. Heard learned counsel for the petitioner and the State.
 3. Counsel for the petitioner has submitted that the main ground of challenging the order is that the learned Sessions Judge did not take into consideration the fact that without taking



cognizance, the learned Chief judicial Magistrate transferred the case under Section 192(1) Cr.P.C. to the Court of Judicial Magistrate, 1st Class for enquiry. Thereafter the learned magistrate after holding enquiry found, prima facie, case against the petitioner for the offence under Section 406 IPC and Section 138 N.I.Act vide order dated 12.07.2013. The aforesaid order dated 12.07.2013 was challenged before the learned Sessions Judge in Cr. Rev. No. 229 of 2013. The learned Sessions Judge dismissed the aforesaid revision vide order dated 24.10.2013. The petitioner is aggrieved by both the order of the court below.

4. In support of his submission learned counsel for the petitioner has relied upon a judgment of this Court in the case of **Arbind Kumar Sinha –v- State of Bihar, reported in 1990(2)PLJR 511**. He has submitted that it is mandatory on the part of the Judicial Magistrate to take cognizance. It is also mandatory for the Magistrate to transfer the case after complying with the provision of Section 192(1) Cr.P.C.

5. Learned counsel for opposite party no.2 has submitted that from order dated 22.03.2013 it is pertinent that the court below has transferred the case under Section 192(1) Cr.P.C. It means that the cognizance has already been taken by the Magistrate. Thereafter the learned Chief Judicial Magistrate



transferred the case under Section 192(1) Cr.P.C. to the court of Magistrate for enquiry. Subsequently enquiry under Section 202 Cr.P.C. was held by the Magistrate and the learned Magistrate vide order dated 12.07.2013 found prima facie case against all the accused persons for the offences under Section 406 IPC and Section 138 of N.I.Act.

6. Learned counsel for opposite party has submitted that subsequently the petitioner has been declared absconder in court below as he did not appear before the court even after issuance of process against him and at present proceeding under section 299 Cr.P.C. is pending against the petitioner. Three witnesses have already been examined. The counsel for the petitioner has, however, submitted that he has no knowledge of present status of the case.

7. In the instant case the counsel for the petitioner has raised only one point of law that the Magistrate has transferred the case without taking cognizance. The Magistrate has not complied with the mandatory provision of Section 192(1) Cr.P.C. It is relevant to quote the provision of Section 190(1), which is as follows:

“190.Cognizance of offences by Magistrate-(1)
Subject to the provisions of this Chapter, any Magistrate of the first class, and any Magistrate of the second class specially empowered in this behalf



under sub-section (2), may take cognizance of any offence-

(a) upon receiving a complaint of facts which constitute such offence.”

(b) upon a police report of such facts;

(c) upon information received from any person other than a police officer, or upon his own knowledge, that such offence has been committed.

8. Therefore, this court does not find any illegality in the impugned order passed by the court below .Accordingly, this application is dismissed.

(Sanjay Priya, J)

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