

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.17360 of 2014

Arising Out of PS.Case No. -1200 Year- 2010 Thana -ROHTAS COMPLAINT CASE District-
SASARAM (ROHTAS)

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1. Dashrath Chandrabanshi Son of Late Raghunath Chandrabanshi
2. Shiv Nath Chandrabanshi Son of Late Khakhan Chandrabanshi
3. Bishwanath Chandrabanshi Son of Late Ganesh Chandrabanshi
4. Raju Kumar Son of Dashrath Chandrabanshi All resident of village- Deo Dand, Post Chunhat, Police Station- Nauhatta, District- Rohtas

.... Petitioner/s

Versus

1. The State of Bihar
2. Rama Hari Ram Son of Late Dewki Ram Resident of village- Deodand Post Chunhat, Police Station- Nauhatta, District- Rohtas

.... 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: 28-07-2017

Heard learned counsel for the petitioners.

This petition has been filed for quashing the order dated 03-08-2013 passed by Judge-in-charge, Dehri (Rohtas) in Complaint Case No. 1200 of 2010 by which and whereunder, the learned Magistrate has found prima facie case under Sections-323, 380, 506 of the Indian Penal Code against all these petitioners after holding inquiry u/S 202 of the Cr.P.C.

Counsel for the petitioners has submitted that for the same cause of occurrence, first information report was lodged by the informant against the petitioner No. 1 and four other unknown



persons, which was registered as Nauhatta P.S. Case No. 39 of 2010 for the offence under Sections-147, 148, 149, 452, 323, 379 of the Indian Penal Code. The complainant has filed the instant complaint case for the same alleged occurrence dated 07-08-2010.

Counsel for the petitioners after taking instruction from the client has submitted that police has already submitted final form in Nauhatta P.S. Case No. 39 of 2010. The learned Magistrate has proceeded in the instant complaint u/S 202 of the Cr.P.C. and after examining the complainant on SA and recording statement of inquiry witnesses, found prima facie case under Sections-323, 380, 506 of the Indian Penal Code.

Section-210 of the Cr.P.C. prescribes the procedure to be followed when there is a complaint case and police investigation in respect of the same offence.

Section-210 of the Cr.P.C. is quoted below:

210. Procedure to be followed when there is a complaint case and police investigation in respect of the same offence:

(1) When in a case instituted otherwise than on a police report (hereinafter referred to as a complaint case), it is made to appear to the Magistrate, during the course of the inquiry or trial held by him, that an investigation by the police is in progress in relation to the offence which is the subject-matter of the inquiry or trial held by him, the Magistrate shall stay the



proceedings of such inquiry or trial and call for a report on the matter from the police officer conducting the investigation.

(2) If a report is made by the investigating police officer under Section 173 and on such report cognizance of any offence is taken by the Magistrate against any person who is an accused in the complaint case, the Magistrate shall inquire into or try together the complaint case and the case arising out of the police report as if both the cases were instituted on a police report.

(3) If the police report does not relate to any accused in the complaint case or if the Magistrate does not take cognizance of any offence on the police report, he shall proceed with the inquiry or trial, which was stayed by him in accordance with the provisions of this Code.

From perusal of Section-210 of the Cr.P.C. it will appear that there is no bar to the learned Magistrate to proceed in the complaint filed by the complainant, in the event, police submitted final form in the case.

The first information report filed before the police has been enclosed as Annexure-2. From perusal of the aforesaid FIR, it appears that although the informant is the same and date as well as time is given as same, but in the accused column, the name of the petitioner No. 1 has been mentioned along with 3-4 unknown persons. It further appears from reading of the FIR that manner of occurrence, described



in the police case, is not exactly the same as mentioned in the complaint case.

Learned Magistrate is only required to see prima facie case at the time of holding inquiry u/S 202 of the Cr.P.C. on the basis of S.A. of the complainant and statement of other witnesses recorded during inquiry.

Therefore, this court does not find any illegality in the impugned order. Accordingly, this Cr. Misc. Application is dismissed.

The learned trial court is directed to proceed in the trial in accordance with law.

The petitioners are given liberty to place all the points as raised in this Cr. Misc. Application in the court below at the time of framing of charge which shall be disposed off in accordance with law without being prejudiced by the order, in the event, the charge has not been framed till date.

(Sanjay Priya, J)

A.K.V./-

AFR/NAFR	AFR
CAV DATE	
Uploading Date	4-8-2017
Transmission Date	4-8-2017

