

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.48457 of 2013

Arising Out of PS.Case No. -159 Year- 2012 Thana -GHOSI District- JEHANABAD

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1. Ramadhar Yadav S/O Harinandan Yadav Resident of Village Ramganj, P.S.
Ghosi, District Jehanabad Petitioner

Versus

1. The State Of Bihar Opposite Party

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Appearance :

For the Petitioner : Mr. Jogendra Prasad, Adv.
For the State : Mr. Amrendra Kumar, APP
For the informant : Mr. Jharkhandi Upadhyay, Adv.

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CORAM: HONOURABLE MR. JUSTICE BIRENDRA KUMAR

ORAL JUDGMENT

Date: 10-01-2017

Heard the learned counsel for the petitioner and the State.

2. This is a petition for quashing the order, dated 04.06.2013, passed by the Chief Judicial Magistrate, Jehanabad, in connection with Ghosi P.S. Case No. 159 of 2012, a case under Section 395 of the Indian Penal Code, registered against unknown.

3. After completion of the investigation, the police submitted final report as false case and recommended for criminal prosecution against the informant under Sections 281 and 211 of the Indian Penal Code.

4. The learned Magistrate disagreed with the police report and took cognizance against petitioner for offence under Section 395 of the Indian Penal Code relying on the material in paragraphs 8, 9, 19, 20, 23 and again 23 wrongly mentioned in the case diary.

5. Submission of the petitioner is that though it is well settled that Magistrate may disagree with the final form submitted by the police. However, the disagreement must be supported by material collected during investigation of the case.

6. The perusal of the case diary, especially the paragraphs, referred in the impugned order, would reveal that the Magistrate has not applied his judicial mind and in absence of material cognizance has been



taken.

7. The contention of the opposite party is that once the Magistrate has taken cognizance, this Court should not lightly interfere with when very serious allegation of road robbery is there.

8. According to the first information report, the informant, Rama Shankar Kumar, on 22.07.2012 at 01.45 P.M. was returning to Hulasganj after collection of cash from different customers. On the way about 7 to 8 miscreants, variously armed, stopped him. His brother, Ravi Shankar Kumar, was driving the vehicle and on the point of fire arm they robbed the informant and his brother. The informant stated that he had identified a man by face, who is resident of village Ramganj, i.e., adjoining village to the village of the informant. The petitioner is resident of village Ramganj.

9. The case diary would reveal that on the same day further statement of the informant and his brother was recorded wherein they reiterated the statement in the first information report. On the next day when the informant and his brother went to village Ramganj, they saw the petitioner and identified by his name. Their statements are recorded in paragraphs 8, 9, 19, and 20 of the case diary. Witnesses Jitendra Kumar and Navlesh Kumar, whose separate statement has been recorded in paragraph 23, have stated that the informant disclosed about the occurrence, however, did not name the petitioner as culprit. In paragraph 57 of the case diary the witness has stated that the informant and this petitioner have agricultural land adjoining and for cutting of ridges there was some hot exchange of words between the informant and the petitioner a few days back.

10. Contention of the petitioner is that if the informant was aware of the name of the petitioner, he should have disclosed it in the first information report itself or he should have disclosed before the police as to from whom they came to know the name of the petitioner,



when they saw the petitioner in his village. The submission is that the prosecution of the petitioner appears to be malicious and false and for substantial justice the impugned order requires to be quashed.

11. I find substance in the submission of the learned counsel for the petitioner. If the petitioner was known to the informant or his brother by name and face, name of the petitioner must have appeared in the first information report itself. In case name of the petitioner was disclosed the informant by some one else on identification of the petitioner that should have been clearly stated as to who had disclosed the name of the petitioner and statement of that witness should also have been recorded by the police. Therefore, apparently, there is no material in the case diary against the petitioner.

12. It is well settled that power under Section 482 of the Code of Criminal Procedure can be exercised in fit cases for advancement of justice and preventing the abuse of the process of law. As noticed above, in absence of material and in the case diary disagreement with the police report not sending up the petitioner for trial is abuse of the process of law.

13. Hence, the impugned order is not sustainable in law. Accordingly, the same is **quashed** and this application stands **allowed**.

(Birendra Kumar, J)

SA/-

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CAV DATE	
Uploading Date	
Transmission Date	

