

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.18944 of 2014

Arising Out of PS.Case No. -1197 Year- 2004 Thana -AURANGABAD COMPLAINT CASE
District- AURANGABAD

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Manoj Kumar Agrawal @ Manoj Prasad Agrawal Son of Badri Prasad Agrawal
R/o Purani Godown, P.S. Kotwali, District-Gaya

.... Petitioner

Versus

1. The State of Bihar
 2. Jawahar Prasad Agrawal Son of Late Munni Lal Agrawal R/o Kamalkunj,
Shak Bazar, Ward No. 8, Daud Nagar, P.S. Daud Nagar, District Aurangabad
- Opposite Parties

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Appearance :

For the Petitioner : Mr. Shivendra Prasad, Advocate
For the State : Md. Fahimuddin, APP

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CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR
ORAL JUDGMENT
Date: 09-08-2017

Heard learned counsel for the petitioner as well as
learned APP appearing on behalf of the State.

2. This quashing application has been filed under
Section 482 Cr.P.C., 1973 seeking quashing of the order dated
01.03.2014, passed by Ad hoc Additional Sessions Judge-II,
Aurangabad in Cr. Rev. No.90 of 2013/26 of 2013 thereby he
declined to interfere with the order dated 03.04.2013, passed by
S.D.J.M., Daudnagar in Complaint Case No.1197 of 2004.

3. By order dated 03.04.2013, the learned S.D.J.M.,
Daudnagar has issued bailable warrant of arrest against the petitioner,
who is accused in the complaint case.

4. Learned counsel appearing on behalf of the petitioner



submits that the complainant filed complaint case and a police case for the same occurrence and he filed also a petition for amalgamation of both the cases under Section 210 Cr.P.C. but the same was also rejected by the court below.

5. Learned APP appearing on behalf of the State submits that there is no any order of the trial court showing that petition filed for amalgamation was rejected.

6. Having considered rival submissions and on perusal of the records it appears that opposite party no.2 first filed a complaint case bearing Complaint Case No.1197 of 2004 on 28.12.2004. The allegation in short is that opposite party no.2 had fixed marriage of his daughter with Manoj Kumar Agrawal, one of the accused, engagement was also held but thereafter demand of Rs.3,00,000/- was made in dowry. The complainant could not fulfill that demand, therefore, they retracted from engagement. Subsequently opposite party no.2 also filed Daudnagar P.S. Case No.109 of 2005 against the bridegroom side on 13.06.2005 under Sections 3/4 of the Dowry Prohibition Act. The accused persons of the complaint case filed a petition before the trial court under Section 210 Cr.P.C. to amalgamate the complaint case with the police case, i.e., Daudnagar P.S. Case No.109 of 2005 as primarily sum and substance of the nature of allegation is the same relating to the same date of



occurrence. The impugned order passed in revision application shows that learned Ad hoc Additional Sessions Judge-II, Aurangabad also upheld the order of the trial court by stating that the number of accused persons are different in both the cases and in complaint case also Section 406 of IPC is also levelled against the accused persons but failed to notice the content of the allegation of both the cases. The complaint case as well as the First Information Report subsequently lodged by the complainant relates to the same offence. Section 210 Cr.P.C. reads as such:

"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."

7. This revision is explicitly relating to the procedure to be followed by the trial court in a situation where a complaint case as well as investigation in police case with respect to the same offence are being proceeded. When it is moved before the Magistrate during the course of inquiry or trial in the complaint case that any investigation by the police in relation to the same offence is in progress and the subject matter in both the cases is same then he requires to stay the proceeding of the inquiry being held in complaint case and to call for a report of the matter from the police officer conducting the investigation thereafter if report is submitted by the I.O. concerned under Section 173 and on such report cognizance of offence is taken against any person who is accused in complaint case then the Magistrate requires to try together both complaint case and police case as if both the cases were instituted on a police report and 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 then he must proceed with the inquiry or trial, which was earlier stayed by him, in accordance with the provision of this Code, so being such position of law in the matter at hand, the Court is of the view that procedure under Section 210 Cr.P.C. requires to be followed by the trial court in order to avoid multiplicity of the case so in this



view of the matter, the impugned order as well as the order dated 03.04.2013 are set aside.

8. In the result, this application stands allowed.

(Arun Kumar, J.)

S.Kumar/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	11.09.2017
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