

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.42078 of 2013

Arising Out of PS.Case No. -null Year- null Thana -null District- SAMASTIPUR

=====

Ashok Kumar Singh son of Sri Hareram Singh resident of vill-
Makusudpur, P.S- Hayaghat, Distt- Darbhanga.

.... Petitioner

Versus

1. State Of Bihar
2. Devashish Kumar Sinha, son of not known to the petitioner, posted as Station Superintendent, Hayaghat Railway Station, P.S- Hayaghat, Distt- Darbhanga.

.... Opposite Party

=====

Appearance :

For the Petitioner	:	Mr. Kanhaiya Prasad Singh, Sr. Advocate Mr. Manish Kumar No.3, Advocate Mr. Rohit Kumar, Advocate
For the Railway	:	Mr. Bijay Kumar Sinha, Advocate
For the State	:	Mr. Sanjay Kumar Sharma, APP

=====

CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL JUDGMENT

Date: 28-06-2017

Heard Sri Kanhaiya Prasad Singh, learned Senior counsel for the petitioner, Sri Bijay Kumar Sinha, learned counsel for the Railway and Sri Sanjay Kumar Sharma, learned Additional Public Prosecutor for the State.

The petitioner in the present case is seeking quashing of the order dated 18.07.2012 passed in RPF (SPJ) P.S. Case No. 205 of 2010/CR. No. 537/2010 by learned Judicial Magistrate (Railway), 1st Class, Samastipur, whereby learned Magistrate had taken cognizance under Sections 153, 146, 147 and 174 of the Railways Act, 1989 against the petitioner.

Learned Senior counsel for the petitioner has placed before me the prosecution report submitted



before the learned Chief Judicial Magistrate (Railway), Samastipur. A perusal of the First Information Report/prosecution report itself shows that the name of this petitioner along with two other persons were shown on the basis of statement said to have been made by the villagers of the neighbouring village. The case was lodged stating that on 19.07.2010 at about 8.55 while the informant was on duty, about 10 persons assembled and started complaining that due to an ongoing construction of bridge the market of the village will be submerged in flood. The informant told them that this is a high level things so they should complaint to the local M.P., M.L.A., District Magistrate and higher officers. Later on when Train No. 256JDNU was going, the driver of the train spotted that a concrete slipper was lying on the Railway track. The driver got that displaced with the help of passengers and public. In this regard the guard gave an information and the train left. Thereafter the informant came to know from the neighbouring villagers the name of three persons including the petitioner. Allegation is that of creating hurdle in the work of Railway employees. In course of investigation police submitted final form saying that there is no sufficient material to proceed against the present petitioner. The final form together with statement of some official witnesses namely, Sri Devashish Kumar Sinha, Sri Vijay



Paswan, Sri Janak Mahto, Sri Shashi Kant Prasad, Sri Rakesh Kumar and Sri Jairaj Giri were filed before the learned Magistrate, the learned Magistrate, however, decided to take cognizance under Section 153, 146, 147 and 174 of the Railways Act, 1989, against all the accused persons including the present petitioner.

A perusal of the order taking cognizance would show that it has been passed in a routine and mechanical manner inasmuch as the order taking cognizance dated 18.07.2012 says that cognizance has been taken against all the three accused persons. In the last line of the order taking cognizance a direction has been issued to issue summon against the present petitioner. It is well settled that cognizance is taken of the offence and not of the offender. After taking cognizance the learned Magistrate has to examine the materials sufficient to issue summon against an accused. The final form contained statement of only official witnesses who have no personal knowledge of the facts alleged in the First Information Report and on that basis police did not find sufficient material to charge-sheet the petitioner. The materials placed before the learned Magistrate, nowhere shows any material to proceed against the present petitioner, however, the learned Magistrate directed issuance of summon without proper appreciation of materials available on record. In



the case of **Prashant Bharti Vs. State of NCT of Delhi** since reported in **AIR (2013) SC 2753**; the Hon’ble Apex Court has laid down the test of four steps which are required to be followed for the purpose of relying upon the document placed by the petitioner before the Court.

Following the said guideline of the Hon’ble Supreme Court, I have examined the records and have found that those are genuine part of police final form and undisputedly go to prove that no prima facie case is made out against the petitioner. Those are the documents which are part of the materials on the basis of which the learned Magistrate has issued summon, however, those materials have not been properly examined by the learned Magistrate. In opinion of this Court no prima facie case is made out for summoning the present petitioner in the present case. The order taking cognizance having been passed in a routine and mechanical manner, the same is hereby set aside.

This application is allowed.

(Rajeev Ranjan Prasad, J.)

Rajeev/-

AFR/NAFR	AFR
CAV DATE	N.A.
Uploading Date	30.06.2017
Transmission Date	30.06.2017

