

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.41249 of 2012

Arising Out of PS.Case No. -89 Year- 1994 Thana -null District- NAWADA

=====

Shyam Kishore Singh, s/o late Phagu Singh, resident of village- Hisua, Mohalla-
Darbar Bagicha, P.S- Hisua, District- Nawada.

.... Petitioner/s

Versus

1. The State of Bihar
2. Arjun Singh,
3. Akhilesh Singh

Both sons of late Mahavir Singh, residet of village- Chatar, P.S- Narhat, District-
Nawada.

.... Opposite Party/s

=====

Appearance :

For the Petitioner/s : Mr. Alok Kumar Sinha, Sr. Advocate.
Mr. Ashish Sinha, Advocate.
Mr. Bhola Kumar, Advocate.
For the State : Mr. Narsingh Tanti, A.P.P.

=====

CORAM: HONOURABLE MR. JUSTICE SANJAY PRIYA

ORAL JUDGMENT

Date: 05-12-2017

1. This application under Section 482 of the Code of Criminal Procedure has been filed for quashing the order dated 10.7.2012 passed by the learned Judicial Magistrate, 1st Class, Nawada, in G.O. 196 (A)/06/Trial No. 1837 of 2012 by which the learned Magistrate has rejected the application filed by the petitioner under Section 239 Cr. P.C.

2. Heard learned counsel for the petitioner and learned counsel for the State.

3. Learned counsel for the petitioner has submitted that court below has on erroneous ground without any prosecution



report taken cognizance against this petitioner for the offence under Sections 182 and 211 of the Indian Penal Code. Thereafter, the petitioner has filed a petition for discharge which was dismissed by the court below in mechanical manner. The petitioner has earlier filed a Cr. Misc. 12014 of 2011 before this Hon'ble Court for quashing of earlier order passed by the court below dated 1.2.2011 rejecting the petition for discharge, which was allowed by this Court with direction to the learned Magistrate to examine discharge petition independently and without being influenced by the order of the Chief Judicial Magistrate and pass appropriate order. It has further been submitted that the court below has again without proper application of mind and considering the law, has rejected discharge petition filed by the petitioner.

4. From the record, it appears that earlier this petitioner has filed First Information Report on the basis of which, Narhat P.S. Case No. 89 of 1999 was registered for the offence under Sections 144 and 379 of the Indian Penal code against the opposite parties No. 2 and 3. The police after investigation submitted Final Report in the case on 1.1.1995 mentioning the case false under Sections 144 and 379 of the Indian Penal Code and recommended for initiation of proceeding under Sections 182 and 211 Indian Penal Code against the petitioner.



5. Earlier petitioner had filed a protest petition during investigation of the case and on the basis of protest petition, complaint case No. 1018 of 1999 was registered in the court of Chief Judicial Magistrate, Nawada. The learned Chief Judicial Magistrate, Nawada, has accepted the final form submitted by the police by order dated 27.8.1999 and took cognizance against this petitioner under Sections 182 and 211 of the Indian Penal Code. The petitioner being aggrieved by that order filed petition under Section 239 of the Cr. P.C. in the court below for discharge but the same was dismissed by order dated 01.02.2011. Thereafter, the aforesaid order was challenged by the petitioner in this Hon'ble Court and the earlier order passed by the court below dated 1.2.2011 was set aside by this Hon'ble Court vide Cr. Misc. No. 12014 of 2011, order dated 30.1.2012, and the case was remanded to the court below to pass appropriate order in accordance with law independently without being influenced by the order of learned Chief Judicial Magistrate, which is annexed as Annexure-5. The court below again passed the impugned order by which the discharge petition filed by the petitioner under Section 239 Cr. P.C. has been rejected on the ground that there are materials in various paragraphs of the case diary as mentioned in the impugned order.

6. This petitioner has enclosed protest petition filed by him in the court below challenging the investigation of the police



after submission of Final Form in the case. The aforesaid protest petition was treated as complaint and complaint case No. 1018 of 1999 was registered.

7. The court below has by order dated 27.8.1999 accepted the final form submitted by the police and took cognizance against the petitioner for the offence under Sections 182 and 211 of the Indian Penal Code.

8. In this manner, from the order dated 27.8.1999 it appears that there was no prosecution report filed by the police. The protest petition has already been filed by the complainant which was on record. But the court below without holding proper enquiry under Section 202 Cr. P.C. on the protest-cum-complaint petition accepted the final form submitted by the police and took cognizance against the petitioner under Sections 182 and 211 of the Indian Penal Code.

9. It is provided under Section 202 Cr. P.C. that “any Magistrate, on receipt of a complaint of an offence of which he is authorized to take cognizance, may postpone the issue of process against the accused, and either enquire into the case himself or direct an investigation to be made by a police officer or by such other person as he thinks fit, for the purpose of deciding whether or not there is sufficient ground for proceeding”.

10. From the order dated 27.8.1999, it appears that



learned Magistrate has accepted the final form submitted by the police, without holding proper enquiry on protest-cum-complaint petition under Section 202 Cr. P.C.

11. The court below by the impugned order after relying on different paragraphs of the case diary has rejected the petition filed by the petitioner under Section 239 Cr. P.C.

12. This Court is of the view that police has already submitted Final Form against the accused persons and protest petition was filed by the petitioner making doubt over the investigation of the police. Therefore, it was not required by the Magistrate to again rely on different paragraphs of the case diary. It further appears that learned Magistrate did not hold proper enquiry under Section 202 Cr. P.C. on protest petition filed by the petitioner. The learned Magistrate in mechanical manner without holding proper enquiry as required under Section 202 Cr. P.C. has taken cognizance by order dated 27.8.1999 against the petitioner.

13. Therefore, the impugned order passed by the court below is not in accordance with law.

14. Accordingly, the impugned order dated 10.7.2012 passed by the learned Judicial Magistrate, 1st Class, Nawada, in G.O. 196 (A)/06/Trial No. 1837 of 2012 along with entire criminal proceeding against the petitioner is hereby quashed.



14. This Criminal Miscellaneous application is accordingly allowed.

(Sanjay Priya, J)

S.Ali/-

AFR/NAFR	AFR
CAV DATE	N.A.
Uploading Date	13/12/2017
Transmission Date	13/12/2017

