

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.18845 of 2012

Arising Out of PS.Case No. – 26 Year- 2008 Thana - Motihari Town District-
EASTCHAMPARAN(MOTIHARI)

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1. Gauri Shankar Tibrewal S/O Late Bishwanath Prasad Tibrewal R/O Mohalla-Teliapatti, Henri Bazar, P.O.+P.S.-Motihari Town, Distt-East Champaran

.... Petitioner/s

Versus

1. The State Of Bihar
2. Manohar Prasad S/O Ramchandra Pd. R/O Mohalla-Tilapatti, P.O. & P.S.-Motihari Town, Distt-East Champaran

.... Opposite Party/s

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Appearance :

For the Petitioner/s	:	Mr. Ashutosh Jha, Advocate. Pravin Kumar, Advocate.
For the Opposite Party/s	:	Mr. Sandip Sahi, Advocate. Mr. Abhishek Kumar, Adv. Mr. Shyam Bihari Singh, APP

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CORAM: HONOURABLE MR. JUSTICE SANJAY PRIYA

ORAL JUDGMENT

Date: 30-06-2017

1. The present petition has been filed for quashing the order dated 18-01-2012 passed by the learned Judicial Magistrate, Sadar, Motihari in Motihari Town P.S. Case No. 26 of 2008, by which and whereunder, the learned Magistrate rejected the discharge petition of the petitioner, which was filed under Section-239 of the Cr.P.C.

2. Heard learned counsel appearing for the petitioner and learned counsel, appearing for opposite party No. 2.

3. It has been submitted on behalf of the petitioner that earlier on the basis of written report, filed by the informant, the case was investigated by the police and after investigation, police



submitted final form finding the case untrue but the learned court below, by order dated 19-08-2009 after looking into the materials, available in the case diary in different paragraphs as mentioned in the order dated 19-08-2009 found prima facie case against the petitioner and other accused and took cognizance against this petitioner and two others. Two other accused namely, Shyam Prakash and Rajesh Bubuna filed criminal revision before the learned Sessions Judge and the order of cognizance against both those petitioners was set aside by the learned Additional Sessions Judge, Motihari by order dated 20-01-2011 passed in Cr. Revision No. 283 of 2009.

4. The petitioner has filed a petition under Section-239 of the Cr.P.C. for discharge before the learned Magistrate, which was rejected.

5. Counsel for the petitioner submits that the informant has filed Compulsory Registration Case No. 04 of 2008 for executing the sale deed in question before the Sub Registrar, Motihari but the same was rejected. Thereafter, the informant has filed appeal before the Collector, Motihari which is still pending.

6. Counsel for the petitioner has further submitted that he has filed a case of kidnapping against the informant and others before the police and police after investigation, found the aforesaid case true and submitted charge sheet against the informant of this case and



other accused persons for the offence under Sections-363, 364, 342, 326, 467, 468, 471/34 of the Indian Penal Code.

7. Learned counsel for opposite party No. 2 has appeared and submitted that he has filed the case against the petitioner alleging therein that after receiving an amount of Rs. 8,00,000/- full consideration money, the sale deed was prepared and signature of the petitioner was taken on the sale deed. The petitioner alongwith witnesses went to the registry office but the petitioner did not execute the sale deed. The informant made request with this petitioner to execute the sale deed in his favour but the same was not done. Learned counsel for opposite party No. 2 has submitted that he has filed the instant case on 06-02-2008 when the petitioner refused to execute the sale deed. After filing of the case by the informant on 06-02-2008, the petitioner filed complaint case of kidnapping against the informant vide Complaint Case No. C-206 of 2008 on 06-02-2008 itself which was sent to concerned police station u/S 156(3) of the Cr.P.C. and subsequently, Motihari Town P.S. Case No. 31 of 2008 was registered. After investigation of the case, the police submitted charge sheet in that case against the informant and other accused. Counsel for opposite party No. 2 drew attention of this court towards Annexure-4 which is the Compulsory Registration Appeal filed before the Collector, Motihari, East Champaran wherein in detail, it has been



stated that after receiving the consideration amount, the petitioner went to registry office, put signature over the sale deed and thumb impression of the witnesses was also taken, but the petitioner did not execute the sale deed.

8. Section-239 Cr.P.C. describes about the scope when the accused can be discharged.

Section-239 Cr.P.C.: *When the accused shall be discharged: If, upon considering the police report and the documents sent with it under section 173 and making such examination, if any, of the accused as the Magistrate thinks necessary and after giving the prosecution and the accused an opportunity of being heard, the Magistrate considers the charge against the accused to be groundless, he shall discharge the accused, and record his reasons for so doing.*

9. Counsel for the petitioner has relied upon a decision reported in **2008(1) PLJR 138 (Rajendra Prasad Gupta Vs. The State of Bihar)** and has argued that the order passed by the Magistrate u/S 239 Cr.P.C. is illegal, if the same has been passed in mechanical manner. The Magistrate has to consider the materials on record and record a finding whether they are groundless or not.

10. In the instant case, from the impugned order, it appears that the learned Magistrate after proper application of mind and discussing the material available on the record has rejected the petition filed u/S 239 of the Cr.P.C. for discharge by the petitioner.

11. Counsel for opposite party No. 2 has relied upon a



decision reported in **(2008) 16 SCC 390 (M VISWANATHAN VS. S.K.TILES AND POTTERIES PRIVATE LIMITED AND OTHERS)** and has argued that scope of exercise of power u/S 482 of the Code in a case of this nature is the exception and not the rule. The section does not confer any new powers on the High Court. It only saves the inherent power which the Court possessed before the enactment of the Code. It envisages three circumstances under which the inherent jurisdiction may be exercised. The Hon'ble Court in that judgment has also mentioned about the judgment of **State of Haryana & Ors. Vs Bhajanlal** wherein the court has elaborated seven conditions, in which the proceedings can be quashed by the High Court.

12. In the instant case, this court finds that the impugned order has been passed by the learned Magistrate after proper application of mind and looking into the materials available against the petitioner in the case diary. Learned Magistrate is not required to consider the defence of the accused at the time of hearing of the petition u/S 239 of the Cr.P.C. It is settled law that charge can be framed, even on the basis of prima facie case being made out.

13. In such circumstances, this court finds no illegality in the impugned order. Accordingly, this Cr. Misc. Petition is dismissed.

14. The court below is directed to proceed in the trial in



accordance with law.

(Sanjay Priya, J)

A.K.V./-

AFR/NAFR	
CAV DATE	
Uploading Date	14-7-2017
Transmission Date	14-7-2017

