

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.46347 of 2013

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Asha Shrivastava Wife Of Dhananjay Prasad Shrivastava Resident Of
Mohalla- Bangala Colony, In Front Of Hanuman Mandir, Mirgnj, Police
Station- Mirganj, District- Gopalganj.

.... Petitioner

Versus

1. The State Of Bihar

2. Smt. Indu Sinha Wife Of Mithilsh Kumar Sinha Retired Headmistress,
Sahu Jain Girls High School, Mirganj, Police Station Mirganj, District-
Gopalganj.

.... Opposite Parties

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Appearance :

For the Petitioner	:	Mr. Sanjay Kumar Verma, Adv. Mr. Amrendra Kumar, Adv.
For O.P. No. 2	:	Mr. Mahesh Nr. Parbat, Sr. Adv.
For the State	:	Mr. G.S.Gupta, APP

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CORAM: HONOURABLE MR. JUSTICE HEMANT KUMAR
SRIVASTAVA
ORAL ORDER

6 25-05-2017 1. Heard learned counsel for the petitioner, learned
Additional Public Prosecutor for the State as well as learned
counsel appearing for the opposite party no. 2.

2. This petition under Section 482 of the Cr.P.C. has
been filed for quashing part of the order dated 25.10.2011 passed
by learned Chief Judicial Magistrate, Gopalganj in Mirganj P.S.
Case No. 30 of 2010 by which and whereunder he having accepted
the final form sent the protest cum complaint petition to the court
of Sri S. Ranjan, Judicial Magistrate 1st Class, Gopalganj for



enquiry treating the said protest petition as complaint petition.

3. The brief fact of the case is that opposite party no. 2 filed complaint case bearing Complaint Case No. 285 of 2010 against the petitioner before the Chief Judicial Magistrate, Gopalganj, who in turn, sent the aforesaid complaint petition to concerned police station for institution of the F.I.R. under Section 156(3) of the Cr.P.C. Accordingly, Mirganj P.S. Case No. 30 of 2010 for the offences punishable under Sections 420, 406 and 408 of the Indian Penal Code was registered. The investigating officer having investigated the aforesaid case submitted final form showing the case as mistake of fact. The learned Chief Judicial Magistrate accepted the final form but converted the protest petition into compliant petition and sent the same to learned Magistrate for enquiry.

4. The contention on behalf of the petitioner is that learned Chief Judicial Magistrate treated the petition of opposite party no. 2 as complaint particularly, in the circumstance when the protest petition filed by the opposite party no. 2 could not have been treated as complaint petition because in the aforesaid petition there was no prayer for taking action against the petitioner. In support of his contention, he referred the decision of **Naresh Chandra Das & Ors vs. State of Bihar and Ors.** reported in



2004(3) PLJR, 692 in which a co-ordinate Bench of this Court has held that a petition could only be treated a complaint petition when there is an accusation against some person and there is prayer for taking action upon a complaint.

5. Learned counsel for the petitioner drew my attention towards Annexure-3 to the petition and submits that initially, the opposite party no. 2 filed protest petition on 28.04.2010 but neither she gave facts of the case nor made any accusation against the petitioner and above all she never made a prayer for initiation of proceeding against the petitioner. Similarly, the opposite party no. 2 again filed a petition on 25.10.2011 but in the said petition also, she did not disclose any accusation against the petitioner nor made any prayer for initiation of proceeding against the petitioner but the learned court below converted the aforesaid petitions into complaint petition and transferred the matter for enquiry.

6. On the other hand, learned counsel appearing for the opposite party no. 2 refuted the above stated submissions arguing that during pendency of the investigation, the opposite party no. 2 had filed protest petition against the investigation and it is an admitted position that prior to registration of the F.I.R., the opposite party no. 2 had already filed complaint petition and,



therefore, even if there was no accusation in subsequent petitions, then also, the previous complaint petition of the opposite party no. 2 could have been treated as complaint petition.

7. Certain facts are admitted in this case. It is an admitted position that in protest petitions filed on behalf of the opposite party no. 2 there was neither accusation nor any prayer for initiation of the proceeding against the petitioner and admittedly, learned court below converted the aforesaid petitions into complaint petition.

8. Section 2(d) of Code of Criminal Procedure, 1973 defines the complaint and says that “complaint” means any allegation made orally or in writing to a Magistrate, with a view to his taking action under this Code, that some person, whether known or unknown, has committed an offence, but does not include a police report. One explanation has also been attached with the aforesaid section and the said explanation says that “A report made by a police officer in a case which discloses, after investigation, the commission of a non-cognizable offence, shall be deemed to be a complaint; and the police officer by whom such report is made shall be deemed to be the complainant.

9. The bare perusal of the aforesaid provision goes to show that to treat a petition as complaint petition, there must be an



allegation as well as prayer for taking action against known or unknown person. So far as police report is concerned, the police report cannot be treated as complaint except in cases of non-cognizable offences.

10. So far as submission of learned counsel for opposite party no. 2 to treat the previous complaint petition as fresh complaint petition even after submission of police report under Section 173 of the Cr.P.C. is concerned, in my view, the previous complaint petition filed by opposite party no. 2 cannot be treated as a fresh complaint petition because admittedly, the aforesaid complaint petition was converted into police report under Section 156(3) of the Cr.P.C. Therefore, I respectfully disagree with the submissions as advanced on behalf of the opposite party no. 2.

11. In view of the aforesaid discussions as well as facts and circumstances of the case, I am of the opinion that part of order dated 25.10.2011 passed in Mirganj P.S. Case No. 30 of 2010 is not in accordance with law and liable to be quashed. Accordingly, part of order dated 25.10.2011 by which the learned Chief Judicial Magistrate, Gopalganj converted the protest petitions in complaint case and directed to proceed in the matter is hereby quashed and accordingly, this petition stands disposed of.



However, it is made clear that this order shall not cause any prejudice to the opposite party no. 2, if she takes steps in accordance with law for redressal of her grievances before the appropriate forum.

(Hemant Kumar Srivastava, J)

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