

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.51237 of 2014

Arising Out of PS.Case No. -223 Year- 2010 Thana -SA SARAM MUFFSIL District- SASARAM
(ROHTAS)

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1. Jang Bahadur Singh Son of Late Bansh Raj Singh R/o Village Sukhari Tola, P.s.
Sasaram (M), District Rohtas

.... Petitioner/s

Versus

1. The State of Bihar
2. Vir Bahadur Singh Incharge Head Master, Primary cum Middle Sanskrit School
Sukhari Tola, Karma, P.s. Sasaram (M), District Rohtas

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Bharat Lal, Advocate
Mr. Rabindra Kumar, Advocate.
For the State : Mr. Nawal Kishore Prasad, APP

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CORAM: HONOURABLE MR. JUSTICE SANJAY PRIYA

ORAL JUDGMENT

Date: 15-01-2018

Heard learned counsel for the petitioner and the State.

This petition has been filed for quashing the order dated
13-11-2014 passed in Cr. Revision No. 16 of 2012 by Ad hoc
Additional Sessions Judge-III, Rohtas at Sasaram by which he
dismissed the revision of the petitioner affirming the order dated 07-
12-2011 passed in G.R. No. 684 of 2010/Tr. No. 1135 of 2011
(Sasaram (M) P.S. Case No. 223 of 2010) passed by Smt. Sachi
Mishra, learned Judicial Magistrate-Ist Class, Sasaram, Rohtas by
which, she refused to discharge the petitioner for offence u/Ss 409,
419 and 471 of the Indian Penal Code.

Counsel for the petitioner has submitted that both



Judicial Magistrates as well as learned Sessions Judge have committed illegality in rejecting the petition of the petitioner filed u/S 239 of the Cr.P.C.

There has been fight between two individuals for the post of Headmaster.

In the written report, filed by the in-charge, Headmaster, there is allegation against this petitioner that in spite of having been dismissed from service and specific direction from the higher authority, the petitioner did not hand over charge to the informant who was in-charge Headmaster of the school. The police on the basis of aforesaid written report, registered Sasaram (M) P.S. Case No. 223 of 2010 in which, cognizance was taken by the learned Magistrate after submission of charge sheet for the offence under Sections-409, 419 and 471 of the Indian Penal Code.

Learned Magistrate has by order dated 07-12-2011 rejected the petition filed by the petitioner for discharge on the ground that cognizance has been taken against the accused for the offence under Sections-409, 419 and 471 of the Indian Penal Code on the basis of the case having been found true by the police during investigation.

The petitioner has challenged the aforesaid order before the learned Sessions Judge in Cr. Rev.No. 16 of 2012 and the same



was also dismissed by order dated 13-11-2014 on the ground that the I.O. has submitted charge sheet after recording statement of witnesses. The learned Magistrate has after looking into materials available in case diary as well as perusing the documents and other materials available on the record including the statement of witnesses in the case diary taken cognizance against the accused.

Counsel for the petitioner has submitted that both the orders have been passed without application of judicial mind.

Counsel for petitioner has further submitted that from the nature of allegation made in the written report, no offence u/Ss 409, 419, 471 of the Indian Penal Code is made out.

Counsel for the petitioner has also submitted that subsequently vide Annexure-3, the petitioner has been reinstated in service and at present he is working as Headmaster of the aforesaid school.

The entire order restoring the petitioner to work as Headmaster passed by the Chairman, Bihar Sanskrit Shikchha Board, Patna dated 25-06-2014 has been enclosed as Annexure-3.

Counsel for the State has submitted that the petitioner has filed second revision as his earlier revision application has already been dismissed by the learned Sessions Judge. It has further been submitted that there is no illegality in the impugned orders.



Counsel for the petitioner has relied upon a decision reported in *AIR 1997 SC (Krishnan and another Vs. Krishnaveni and another) 987* and has submitted that the High Court can entertain a petition in case of miscarriage of justice or an abuse of process of the court by exercising inherent power vested u/S 482 Cr.P.C. and prohibition of Second revision u/S 397(3) Cr.P.C. is not applicable under inherent power of the court u/S 482 Cr.P.C.

This court after looking into allegation made in the written report finds that there is dispute between the informant who was in charge Headmaster and the petitioner for taking over charge of the post of Headmaster. The informant has levelled vague allegation that charge was not handed over to him and misuse of stamp of the school was done by the petitioner. But from perusal of impugned order of the learned Judicial Magistrates as well as the learned Sessions Judge, it does not appear that during investigation, police has mentioned about any specific case of misuse by this petitioner of letter pad of the school or stamp of the school for undue favour. It is an admitted position that vide Annexure-3, the suspension as well as dismissal from service of the petitioner was found illegal and the petitioner has been restored to the service and he is at present working as Headmaster of the aforesaid school.

This court further finds from perusal of the order passed



by the learned Magistrate dated 07-12-2011 as well as learned Sessions Judge passed in Cr. Rev. No. 16 of 2012 that both of them have not applied their judicial mind and have rejected the petition filed u/S 239 Cr.p.C. merely on the ground that police has after investigation submitted charge sheet against the petitioner.;

Section 239 Cr.P.C. reads as follows:

239. When 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.”

There is clear averment in Section-239 Cr.P.C. that after giving the prosecution and the accused an opportunity of being heard, the Magistrate considers charge against the accused to be groundless, he shall discharge the accused and record his reasons for doing so.

In the instant case, this court finds that both the courts (learned Magistrates as well as learned Sessions Judge) has not applied the judicial mind with respect to the facts of the case as well as the allegations levelled against this petitioner and have passed the impugned orders merely on the ground that police has after investigation found the case true against the petitioner for the offence



under Sections- 409, 419, 471 of the Indian Penal Code.

In such circumstances, this court finds that both courts have committed illegality in passing the impugned order.

Accordingly, the order dated 07-12-2011 passed by learned Magistrate and the order dated 13-11-2014 passed by learned Sessions Judge in Cr. Rev. No. 16 of 2012 are hereby quashed.

The petitioner is discharged from the offence levelled against him.

This Cr. Misc. Petition is accordingly allowed.

(Sanjay Priya, J)

A.K.V./-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	08-02-2018
Transmission Date	08-02-2018

