

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.174 of 2017

Arising Out of PS.Case No. -158 Year- 2014 Thana -GARKHA District- SARAN

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Bachha Sah son of Late Raghunath Sah, resident of village - Maiki, P.S.- Garkha,
District - Saran.

.... Petitioner/s

Versus

The State of Bihar

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Udit Narayan Singh, Advocate
: Mr. Gajendra Kumar Singh, Advocate
For the State : Mr. Dr. Mayanand Jha, APP

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 20-02-2018

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

2. This application under Section 482 of the Code of Criminal Procedure (for short 'the Cr.P.C.') has been filed for quashing the order dated 01.10.2015 passed by the learned Chief Judicial Magistrate, Saran at Chapra in C.G.S. No.49 of 2015 corresponding to Trial No.2181 of 2016 by which cognizance has been taken for the offence punishable under Section 212 of the Cr.P.C.

3. The petitioner had instituted Garkha P.S. Case No.158 of 2014 which was registered under Sections 341, 323, 324, 307 and 504 read with Section 34 of the Indian Penal Code (for short 'the I.P.C.'). The allegation in the FIR was that on 10.08.2014 while the petitioner



was sitting at his door five persons, namely, Pradeep Kumar, Madan Mohan Prasad, Ritesh Kumar, Ashok Prasad and Lallan Prasad came there and started abusing one Satyendra Kumar Singh to which he objected. In the meantime, all the accused persons started quarreling with him. They abused him and, on objection, Ritesh Kumar took out dagger from his pocket and handed over the same to Pradeep Kumar, who assaulted with dagger in the left side of the petitioner's abdomen. After investigation of the case, the police found the allegation to be true against one Pradeep Kumar Singh @ Munna Singh and submitted charge-sheet against him and continued with investigation in respect of other accused persons. After taking cognizance of the offence, the case of Pradeep Kumar Singh @ Munna Singh was committed to the Court of Sessions for trial. In course of trial five witnesses were examined on behalf of the prosecution including the petitioner. After recording the statement of the accused under Section 313 of the Cr.P.C. and closure of the case, the case was fixed for hearing and, after hearing the parties, the trial court acquitted the accused giving him benefit of doubt vide judgment dated 14.08.2015. While recording the aforesaid judgment, the trial court recorded that the informant of the case was a Choukidar and he had deliberately not supported the prosecution case as a result of which the court was compelled to record the judgment of acquittal. The trial court recorded



that being a government servant, the informant had tried to ensure acquittal of an accused in a criminal case which warranted his prosecution under Section 212 of the Cr.P.C. Hence, it sent a copy of the judgment to the District Magistrate, Saran, Chapra for filing a complaint under Section 212 of the Cr.P.C. against the informant of the case. On the recommendation made by the trial court, no action was taken by the District Magistrate. However, the Additional Sessions Judge himself sent a written complaint in this regard to the Court of Chief Judicial Magistrate, Saran, Chapra vide his letter no.242 dated 26.08.2015 pursuant to which the Chief Judicial Magistrate, Saran, Chapra took cognizance of the offence punishable under Section 212 of the I.P.C. against the petitioner.

4. Mr. Udit Narain Singh, learned counsel for the petitioner He submitted that the learned Chief Judicial Magistrate, Saran, Chapra has completely failed to apply his judicial mind while passing he impugned order. He submitted that Section 212 of the Penal Code prescribes punishment for the offence of harbouring offender. However, it is not even alleged in the complaint filed by the learned Additional Sessions Judge that the petitioner harboured any offender or concealed any offender with intention of screening him from legal punishment.

5. On the other hand, Dr. Mayanand Jha, learned



Additional Public Prosecutor appearing for the State submitted that the order impugned does not suffer from any illegality. According to him, the trial court rightly took the view that since the petitioner being informant in a criminal case deliberately tried to defend the accused and did not support the prosecution case, the ingredients of the offence punishable under Section 212 of the Cr.P.C. were attracted.

6. I have heard learned counsel for the parties and perused the record.

7. The relevant Section of the I.P.C. reads as under:

“212. Harboursing offender.—Whenever an offence has been committed, whoever harbours or conceals a person whom he knows or has reason to believe to be the offender, with the intention of screening him from legal punishment;

if a capital offence.—shall, if the offence is punishable with death, be punished with imprisonment of either description for a term which may extend to five years, and shall also be liable to fine;

if punishable with imprisonment for life, or with imprisonment.—and if the offence is punishable with imprisonment for life, or with imprisonment which may extend to ten years, shall be punished with imprisonment of either description for a term which may extend to



three years, and shall also be liable to fine;

and if the offence is punishable with imprisonment which may extend to one year, and not to ten years, shall be punished with imprisonment of the description provided for the offence for a term which may extend to one-fourth part of the longest term of imprisonment provided for the offence, or with fine, or with both.

“Offence” in this section includes any act committed at any place out of India, which, if committed in India, would be punishable under any of the following sections, namely, 302, 304, 382, 392, 393, 394, 395, 396, 397, 398, 399, 402, 435, 436, 449, 450, 457, 458, 459 and 460; and every such act shall, for the purposes of this section, be deemed to be punishable as if the accused person had been guilty of it in India.

Exception.—This provision shall not extend to any case in which the harbour or concealment is by the husband or wife of the offender.”

8. From a plain reading of Section 212 of the I.P.C., it would be manifest that this provision applies to harbouring or absconding a person, who has actually committed certain offences under the Penal Code or under some special or local law punishable



with imprisonment for a term of one year or upwards. It pre-supposes that some offence has actually been committed, and that the harbourer gives refuge to one whom he knows or has reason to believe to be the offender with the intention of screening him from legal punishment. The ingredients of the offences are thus; (i) commission of an offence; (ii) Harboursing or concealing the person known or believed to be the offender; (iii) Such concealment must be with the intention of screening him from legal punishment.

9. Here in the present case even on admitted facts there is no allegation that the petitioner harboured or concealed the person known or believed to be the offender rather the case is that it was the petitioner on whose statement the FIR was instituted in the police station and investigation was conducted by the police pursuant to which charge-sheet was submitted and after taking cognizance of the offence and commitment of the case the offender was put on trial. Thus, it cannot be said that the petitioner in any way concealed the offender with intention of screening him from legal punishment. The alleged act of not supporting the prosecution case during trial may attract some other offences under the Penal Code, but certainly the offence under Section 212 of the I.P.C. was not attracted in the present case.

10. Apparently, the learned Chief Judicial Magistrate while



passing the impugned order completely failed to apply his judicial mind, and took cognizance of the offence and summoned the petitioner to face trial mechanically.

11. In view of the discussions made above, the impugned order dated 01.10.2015 passed by the learned Chief Judicial Magistrate, Saran, Chapra in C.G.S. No.49 of 2015 corresponding to Trial No.2181 of 2016 is quashed.

12. The application stands allowed.

(Ashwani Kumar Singh, J)

Md.S./-

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