

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.2669 of 2015

Arising Out of PS. Case No.-5 Year-2012 Thana- EAST CHAMPARAN COMPLAINT
District- East Champaran

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1. Umesh Prasad @ Umesh Sah S/O Late Panna Lal Sah
 2. Ashok Prasad@Ashok Sah S/O Late Panna Lal Sah
 3. Ram Ekbal Prasad@Ram Ekbal Sah Son of Dhanush Sah
- All are Residents of village-Sareya Pratap Tola,P.S-Pharpur,Distt.-East Champaran

... .. Petitioner/s

Versus

1. The State of Bihar
2. Narayan Sah, son of Late Ganesh Sah, resident of village- Saraiya Pratap Tola, P.S.- Paharpur, Dsitrict- East Champatan.

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Manoj Kumar Singh
For the Opposite Party/s : Mr. Shakir Ahmad (App)

CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR
ORAL JUDGMENT

Date : 27-07-2018

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

2. The petitioners seek quashing of cognizance order dated 07.09.2012 passed by the learned Chief Judicial Magistrate, Motihari, East Champaran in Gram Kutchery Case No. 05 of 2012 thereby taking cognizance of offence under sections 427, 436 and 429 of the Indian Penal Code.

3. A brief fact giving rise to the case is that complaint was filed before the Gram Kutchery by the complainant alleging that accused persons set fire in his house resulting into damage of household articles and food grains, kept therein, and she-



buffalo also died due to burn injury.

4. Learned counsel for the petitioner submits that learned Chief Judicial Magistrate cannot take cognizance merely on the basis of the complaint being transmitted to the court by the Gram Kutchery, the complainant has not filed any complaint before the concerned court and none of the witnesses of the complaint including the complainant was examined before issuing the processes for appearance of the accused.

5. Learned counsel appearing on behalf of the complainant submits that there is no illegality in the impugned order.

6. Having considered the rival submissions and on perusal of the record, the Court finds that cognizance has been taken in the matter under Section 436 of I.P.C. which is exclusively triable by the Court of Sessions. The Chief Judicial Magistrate took cognizance of offence merely on perusal of the complaint transmitted by the Gram Kutchery and also issued processes under Section 204 of the Criminal Procedure Code. A Magistrate can take cognizance under section 190 of the Criminal Procedure Code in three situations. First, upon receiving a complaint of facts which constitute such offence; second, upon receipt of a police report of such facts and third,



on receiving of information from any person other than a police officer, or even upon his own knowledge, that such offence has been committed.

7. Taking cognizance has not been defined in the Criminal Procedure Code, but, whenever the Magistrate applies his mind on the facts of the accusation finding *prima facie* case being made out for proceeding further for inquiry then it is deemed that he takes cognizance of offence. However, if the Magistrate decides to send the complaint to Police Officer for registration of FIR under Section 156(2) of Cr.P.C. in such situation cognizance is not taken. Chapter XV of the Criminal Procedure Code deals with the procedure relating to examination of a complaint and witnesses and regarding postponement of issue of process against the accused persons. Sub -section(2) of Section 202 of Cr.P.C. reads as such:-

“202. Postponement of issue of process.-(1) xxx xxx

(2) In an inquiry under sub-section (1), the Magistrate may, if he thinks fit, take evidence of witness on oath:

Provided that if it appears to the Magistrate that the offence complained of is triable exclusively by the Court of Session, he shall call upon the complainant to produce all his witnesses and examine them on oath.”

8. In view of these provisions, it is mandatory that after finding a *prima facie* case being made out, exclusively triable by the Court of Session, then Magistrate is required to examine



all the witnesses on oath produced by the complainant, but in the present case, no such procedure has been followed rather only after receiving the complaint, issued process and taken cognizance against the accused persons under Section 204 of Cr.P.C. So the issuance of process by the the impugned order is bad in law, accordingly, it is set aside.

9. The application stands allowed.

(Arun Kumar, J)

Sujit/ Saurabh

AFR/NAFR	AFR
CAV DATE	NA
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