

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.3030 of 2015

Arising Out of PS.Case No. -156 Year- 2007 Thana -BAHADURPUR District- DARBHANGA

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1. Pawan Kumar @ Pawan Kunwar, son of Sri Vishwanath Kunwar, resident of village - Gangapatti, P.S-Bahadurpur, Distt.-Darbhanga.

.... Petitioner/s

Versus

1. The State of Bihar
2. Ramanjee Jha, s/o late Jaysudan Jha, resident of village-Gangapatti, P.S-Bahadurpur, Distt.-Darbhanga

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Dinesh Jha, Advocate

For the Opposite Party/s: Dr. Rabindra Kumar, APP

: Mr. Prashant Kumar Chaudhary, Advocate

Mr. Shivendra Kumar Sinha, Advocate

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CORAM: HONOURABLE MR. JUSTICE SANJAY PRIYA

ORAL JUDGMENT

Date: 07-08-2018

This application under Section 482 of the Code of Criminal Procedure has been filed for quashing the order dated 09.12.2014 passed by the *Ad-hoc* Additional Sessions Judge-IV, Darbhanga in Criminal Revision No.383 of 2013, arising out of Bahadur P.S. Case No.156 of 2007, by which he has set aside the order dated 24.04.2013 passed by the Judicial Magistrate, 1st class, Darbhanga, in Bahadur P.S. Case No.156 of 2007 (G.R.No.1502 of 2007) whereby the Magistrate had rejected the petition for discharge filed by the Opposite Party No.2.

Heard learned counsel for the petitioner and learned APP for the State as well as learned counsel for the Opposite Party No.2.

Counsel for the petitioner has submitted that the petition for discharge filed by the Opposite Party No.2 was rejected by the Magistrate



by order dated 24.04.2013 by relying on different paragraphs in the case diary. Learned Magistrate is not required to give reasons to reject the discharge petition. The revisional Court has illegally set aside the order of the Magistrate on the ground that the Magistrate has not assigned any reason while rejecting petition seeking discharge by accused-Opposite Party No.2.

On the other hand, learned counsel appearing on behalf of Opposite Party No.2 has submitted that, in fact, there was no material against the Opposite Party No.2 in the entire case diary. Police has not sent up Opposite Party No.2 for trial. The learned Magistrate had not gone thoroughly through the materials in the case diary. The revisional Court has taken all the materials available in the case diary into consideration and by speaking order has set aside the order of the learned Magistrate. Counsel for the Opposite Party No.2 further submits that provision of Section 239 Cr. P.C. provides that if, upon considering the police report and the document 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.

Case diary was called for to verify the materials which have come during investigation against Opposite Party No.2. The case diary



has been received.

The Magistrate in the order dated 24.04.2013 has mentioned that there are materials against Opposite Party No.2 in para 6 and 18 of the case diary.

The revisional Court has considered para 6 and 18 of the case diary in the impugned order. The revisional Court has mentioned in the impugned order that the father of the informant in para 6 of the case diary has disclosed the name of Opposite Party No.2 as having caught hold the hand of son of the informant. Similarly, the informant in his re-statement in para 18 has stated that Opposite Party No.2 had caught hold his hand. Similar statement has been made by brother of the informant, namely, Mahesh Kumar, in para 19 of the case diary. The statement of independent witnesses have been recorded in para 8, 9, 10, 20 and 21. They have not alleged anything against the petitioner in the commission of aforesaid offence.

This Court after looking into the order of the revisional Court finds that the revisional Court has passed the order after looking into the materials available in the case diary and upon consideration of all the materials.

This Court while exercising power under Section 482 Cr. P. C. is only required to see whether there has been any abuse of process of any Court or miscarriage of justice.

This Court after looking into the impugned order passed by



the revisional Court finds that the Court after proper appreciation of material available in the case diary has set aside the order of the learned Magistrate. This Court is not hearing second revision under the jurisdiction of Section 482 Cr. P. C. to revise the order passed by the learned Magistrate. This Court is only looking whether any abuse of process of any Court or miscarriage of justice has been committed by the learned revisional Court.

The revisional Court has passed the impugned order after proper appreciation of material available in case diary. As such, this Court does not find any illegality in the impugned order.

This application is, accordingly, **dismissed**.

The Trial Court will proceed with the trial of other accused persons in accordance with law.

The petitioner, if so advised, may seek appropriate remedy in accordance with law during trial in the event cogent and reliable evidence comes against the Opposite Party No.2.

(Sanjay Priya, J)

J.Alam/-

AFR/NAFR	AFR
CAV DATE	N/A
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