

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.31233 of 2017

Arising Out of PS.Case No. -39 Year- 2015 Thana -MAHILA PS District- JEHANABAD

=====

1. Rabindra Kumar @ Ravindra Kumar @ Ravindra Kumar Singh Son of Late
Ram Lakhan Prasad, Resident of Delhapur, P.S.-Delha, District-Gaya.

.... Petitioner/s

Versus

1. The State of Bihar

.... Opposite Party/s

=====

Appearance :

For the Petitioner/s	:	Mr. D. N. Tiwari, Adv. Mr. A. B. Verma, Adv.
For the State	:	Mr. Sadanand Paswan, Spl. P.P.
For the Informant	:	Mrs. Anita Kumari Singh, Adv.

=====

CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 28-02-2018

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

2. This application under Section 482 of the Code of Criminal Procedure (for short 'Cr.P.C.') has been filed by the petitioner for quashing of the order dated 04.04.2017 passed by the learned Sub-Divisional Judicial Magistrate, Jehanabad in Trial No.1201 of 2017 arising out of Jehanabad Mahila P.S.Case No. 39 of 2015 by which he has dismissed the application filed by the petitioner under Section 239 of the Cr.P.C. for discharge and decided to frame charge for the offence punishable under Section 354 of the Indian Penal Code (for short 'IPC').

3. The prosecution case, in short, as per written report of



the informant, who is posted as Postal Assistant at Head Post Office, Jehanabad, is that on 01.05.2015 at about 5.00 p.m. while she was comparing the bills paid, the petitioner on finding her alone attempted to misbehave with her by catching hold of her hand with evil intention, which was objected by her and she raised alarm in consequence whereof he fled away. Thereafter, the informant informed the Post Master and the employees present in the office as well as the Senior Superintendent of the Post Office regarding the incident.

4. On the basis of the aforesaid information lodged by the informant, Mahila (Jehanabad) P.S. Case No. 39 of 2015 was registered for the offences punishable under Section 354 of the IPC and Section 3(1)(xi) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short 'Act of 1989').

5. The case was investigated by the Investigating Officer and on completion of investigation the police report vide charge-sheet no. 103/2015 dated 17.10.2015 was filed in the court holding the allegation to be true against the petitioner for the offences punishable under Section 354 of the IPC and Section 3(1)(xi) of the Act of 1989.

6. Thereafter, the learned Sub-Divisional Judicial Magistrate, Jehanabad vide order dated 08.01.2016 finding a prima facie case to be made out against the petitioner took cognizance of the offence punishable under Section 354 of the IPC only. Subsequently,



the Investigating Officer of the case sought permission for further investigation in terms of Section 173(8) of the Cr.P.C. from the court concerned, which was granted vide order dated 04.04.2016 and the Investigating Officer conducted further investigation and submitted final report holding “lack of evidence” in the court of Sub-Divisional Judicial Magistrate, Jehanabad, vide supplementary police report bearing no. 74/15 dated 18.10.2016.

7. On submission of final report, the petitioner made a prayer on 20.12.2016 in terms of Section 239 of the Cr.P.C. for discharging him from the case.

8. After hearing the parties, the learned Sub-Divisional Judicial Magistrate, Jehanabad, vide order dated 04.04.2017, rejected the prayer of the petitioner and ordered for framing of charge against him under Section 354 of the IPC.

9. Being aggrieved by the aforesaid order dated 04.04.2017, Mr. D.N. Tiwari, learned counsel for the petitioner submitted that the rejection of the application of the petitioner for discharge merely on the ground that at the stage of charge only existence of prima facie evidence is to be seen and a few instances may be sufficient to frame charge is erroneous in law. He submitted that initial investigation was perfunctory in nature and when this fact was brought to the notice of the superior police officer a direction was given to investigate the case further. In course of further



investigation conducted after obtaining order of the court, it was found that the entire case lodged against the petitioner was false and there was complete lack of evidence in support of the allegation made by the informant. He submitted that though the trial Magistrate is competent to differ with the police report submitted under Section 173(2) of the Cr.P.C. and take cognizance of the offence, the fact of the matter is that no employee of the Post Office, which is the place of occurrence, has supported the case of the informant during the course of investigation.

10. He submitted that even from perusal of the order of cognizance dated 08.01.2016 it would be manifest that the learned Magistrate had not applied his judicial mind while passing the order as the order was passed on a pre-printed format by filling up blanks. He submitted that this Court has repeatedly cautioned the Judicial Officers not to pass order on a pre-printed or pre-typed copy by filling up certain blanks.

11. On the other hand, Mr. Sadanand Paswan, learned Special Public Prosecutor appearing for the State submitted that the law is well settled that even on the basis of prima facie material charges can be framed against the accused. He submitted that the court was not bound by the opinion of the police and in the present case even before the second police report was submitted under Section 173(2) of the Cr.P.C. the learned Sub-Divisional Judicial



Magistrate had already taken cognizance of the offence. He contended that the order of cognizance is not under challenge in the present application and, thus, it would not be proper for this Court to look into the manner in which the same was passed by the learned Sub-Divisional Judicial Magistrate.

12. Mrs. Anita Kumari Singh, learned counsel for the informant supported the contention advanced by the learned counsel for the State. She submitted that there is specific case against the petitioner that he tried to outrage the modesty of the informant and when she raised *hullah*, the petitioner fled away. She submitted that the allegation was fully supported by the informant and, therefore, it cannot be said that there is no evidence against the petitioner to frame charge.

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

14. The order dated 08.01.2016 passed by the learned Sub-Divisional Judicial Magistrate, Jehanabad by which he took cognizance of the offence reads as under :-

“Perused the record. From perusal, it appears that the I.O. of the case has already been submitted charge sheet No.-103/15 dated 17.10.15 along with case diary against the accused persons namely 1 Ravindra Kumar Singh u/s 354 I.P.C. and 3(1)(xi) SC/ST Act.

Heard A.P.O. on the point of cognizance. Also perused the FIR along with the connected papers Charge sheet and case diary submitted by the police which disclose that a prima facie case U/s 354 I.P.C.



No material available u/s 3(1)(xi) SC/ST Act in case Diary, is made out against the accused persons Namely Ravindra Kumar Singh.

Hence Cognizance of offence U/s 354 of I.P.C. taken against the accused persons aforesaid.

O/c issue summon to accused person dated 05.2.16 for appearance of the accused persons.”

(underlining mine)

15. It would be relevant to note that from perusal of the aforesaid order it would be clear that only the underlined part has been filled up by the learned Magistrate on a pre-printed format. In the opinion of this Court, order of cognizance of the offence and summoning a person to face trial could not have been passed in the above manner by filling up blanks. This shows complete non-application of mind by the court. However, the learned counsel for the informant and the learned counsel for the State have rightly pointed out that the said order is not under challenge before this Court. But, even otherwise, I find it difficult to sustain the order passed by the learned Sub-Divisional Judicial Magistrate for the simple reason that he has failed to make distinction between the two stages of criminal case, i.e. the stage when cognizance is taken and the stage when charges are to be framed. At the stage of taking cognizance of the offence, the court is required to see whether a prima facie case is made out or not. However, at the stage of framing of charge, the court has to see upon such consideration, examination,



if any, and hearing that whether there is ground for presuming that the accused has committed an offence triable by the court or not. The requirement at the stage of framing of charge is certainly not the same as that of the requirement at the stage of summoning of an accused.

16. There is undoubtedly a difference between taking cognizance of the offence and framing of charge. So far as the level of satisfaction is required, cognizance of an offence can be taken on the basis of a prima facie case whereas for framing of charge, the requirement is of sufficient ground for proceeding against an accused. If the charge against the accused is groundless, the Magistrate may discharge the accused in exercise of power conferred under Section 239 of the Cr. P.C.

17. From the impugned order dated 04.04.2017, it would be manifest that the learned Sub-Divisional Judicial Magistrate has decided to frame charge against the petitioner to face trial only because the learned Magistrate has not considered as to whether or not there is sufficient ground for proceeding against the petitioner.

18. In view of the above discussions, the impugned order dated 04.04.2017 passed by the learned Sub-Divisional Judicial Magistrate, Jehanabad in Trial No.1201 of 2017 arising out of Jehanabad Mahila P. S. Case No. 39 of 2015 is set aside. The case is remanded back to the court of Sub-Divisional Judicial Magistrate, Jehanabad, who shall be required to look into the materials and pass



orders in accordance with law in the light of the observations made hereinabove.

19. This application stands allowed.

(Ashwani Kumar Singh, J)

Pradeep/-

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	06-03-2018
Transmission Date	06-03-2018

