

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Revision No.146 of 2015

Arising Out of PS. Case No.-1300 Year-2014 Thana- SASARAM NAGAR District- Rohtas

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1. Kashi Singh, son of late Gurucharan Singh, Reader Political Science and Complete Co- Coordinator, B.C.A Shanti Prasad Jain College, Sasaram and at present holding the post of Principal , Shanti Prasad Jain College, Sasaram.
 2. Manoj Kumar, son of late Baleshwar Ram, Registrar, Veer, Kunwar Singh, University, Bhojpur at Ara. Resident of village- 42 B, Sri Krishnapuri , P.S.- Sri Krishnapuri, District- Patna.

... .. Petitioner/s

Versus

1. The State of Bihar.
2. Sri Bhagwan Singh, Son of Sri Chandra Dev Chaudhary, resident of Mohalla- Kuraiech (Mahavir sthan) , P.S.- Sasaram, District- Rohtas.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Ajay Kumar Thakur, Advocate.
Mr. Nilesh Kumar, Advocate.
Mr. M.K.Choudhary, Advocate.
Mr. R.Raman, Advocate.

For the Respondent/s : Mr. M.Rab (App)

CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR
C.A.V JUDGMENT

Date : 18-08-2018

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

2. The petitioners, accused persons of Complaint Case No. 104 of 2011 (arising out of Sasaram Town P.S.Case No. 1300 of 2014), have preferred this revision application against order dated 17.09.2014 passed by the Additional Sessions Judge-V, Rohtas at Sasaram in Criminal Revision No. 114 of 2014 thereby allowed the revision application filed by Opposite Party No. 2, Bhagwan Singh, complainant, setting aside order



dated 29.01.2014 passed by the Chief Judicial Magistrate, Sasaram whereby the complaint case was transferred for enquiry and disposal under Section 192(1) of the Criminal Procedure Code (hereinafter referred to as the 'Code') to the court of Judicial Magistrate, 1st Class, Sasaram.

3. The brief facts giving rise to the case is that Bhagwan Singh, complainant, filed a Complaint Case No. 104 of 2014 against the accused persons, petitioners of the present application, Vice Principal of Shanti Prasad Jain College, Sararam and the Registrar of the Veer Kunwar Singh University respectively making accusation of committing embezzlement and misappropriation of money belonging to college fund. The specific accusation is that for the academic sessions 2006-2009 of BCA, the fees deposited by 64 students, Rs. 10,000/-each, out of the total money received, only Rs. 3,21,500/- was deposited in the Bank account of the college and rest amount was misappropriated. The audit report submitted by the Chartered Accountant on 24.09.2012 also recorded misappropriation of Rs. 10 lacs done by the accused persons. The complainant brought this criminal act to the knowledge of Manoj Kumar, Registrar of the University but no action was taken as he was hand in glove with the Vice Principal and financial irregularities



and misappropriation continued and *Sesam* Trees of the College were also auctioned in the name of fictitious person and the woods, valued Rs. 15 lacs, was misappropriated. The complainant asserted in the complaint petition that written information in this regard was submitted to the Officer In-charge, Town Police Station Sasaram, but no action was taken. Therefore, the complainant made prayer in the complaint petition for giving direction to the S.H.O. of the concerned Police Station for lodging FIR and to proceed with the investigation. However, the learned Chief Judicial Magistrate, by order dated 29.01.2014, taking cognizance of the offence, transferred the case under Section 192(1) of the Code for enquiry and disposal, instead of sending the complaint, as prayed for, under Section 156(3) of the Code, to the police for institution of the FIR and to proceed with the investigation.

4. Learned counsel appearing on behalf of the petitioners submits that by the impugned order, the learned Additional Sessions Judge has set aside order dated 29.01.2014 which is not appropriate for the reason that it was an interlocutory order, so no revision lies against an interlocutory order. Moreover, the Judicial Magistrate, after receiving the complaint on transfer, also passed order dated 13.03.2014 calling for a report from the



concerned police station. The learned Additional Sessions Judge has failed to appreciate that already cognizance of the offence was taken by the Chief Judicial Magistrate despite that interlocutory order was set aside; moreover, the complaint was filed out of malice at the instance of witness No. 1 of the complaint petition because of dispute relating to his promotion so he nursed grudge against the petitioner no. 1. Further, it is submitted that it is discretion of the court whether to proceed further for enquiry and trial under chapter XIV & XV of the Code or to send the Complaint for lodging FIR to the police for the purpose of investigation. Since the Chief Judicial Magistrate has taken first option to proceed in the matter for enquiry after taking cognizance so there is no illegality in the order dated 29.01.2014 and required no interference.

5. Learned counsel for the petitioners has placed reliance in the case of Priyanka Srivastava and Anr. v. State of Uttar Pradesh and Ors.; (2015) 6 SSC 287. of Bipin Kumar Singh & Anr. v. The State of Bihar through the Director General of Police & Ors. ; 2016 (1) PLJR(HC) 923.

6. Contrary to the submission advanced by learned counsel for the petitioners, learned counsel of the opposite party No. 2 as well as the State submitted that order dated 29.01.2014



passed by Chief Judicial Magistrate in Complaint Case No. 104 of 2011 is not an interlocutory order for the reason that it is an order of the moment affecting the rights of the complainant. Learned counsels have placed reliance to a Full- Bench decision of the Lucknow Bench of Allahabad High Court in the case of Jagannath Verma & Ors. State of U.P. & Anr. reported in AIR 2014 All.214 and elaborating the principle laid down in the said judgment, it is submitted that questions were raised in the said decision whether an order passed by the Magistrate declining to entertain an application, under Section 156 (3) of the Cr.P.C., is a matter of moment or an interlocutory order and the Court held that an order declining to send the complaint under Section 156(3) of the Code is an order of moment and not an interlocutory order affecting important right of the complainant and the Court held that revision application filed against such an order challenging it as interlocutory order is not accepted rather revision application is held maintainable under Section 397(1) of the Cr.P.C.

7. Having consideration of rival contentions of both sides and on perusal of the record, the Court finds that the complaint was filed by O.P. No. 2/ the complainant with specific prayer made therein to send the complaint, under Section 153(3) of the



Code to the S.H.O of Town Police Station, Sasaram, for institution of FIR and to investigate the matter but the learned Chief Judicial Magistrate declined to send complaint for institution of FIR instead opted for enquiry under Chapter -XV of the Code after taking cognizance of the offence in view of Section 190(a) of the Code. It is the settled law that any information reported to the Police relating to commission of cognizable offence is required to be registered by the Officer In-Charge of the concerned Police Station after reducing the same in writing and signed by the person giving information. Section 156 of the Code envisages that after institution of FIR, the Officer In-Charge of the Police Station proceeds further with the investigation of any cognizable case, in which the court has got jurisdiction over the local area within the limits of that Police Station. There is no requirement of obtaining any order from the Magistrate for investigation in such matters. The Officer In-Charge is to proceed with the investigation as per the provision of Chapter XIII of the Code and such proceeding of the police officer can not be challenged at any stage with regard to jurisdiction of his investigation in the mater. According to subsection (3) of Section-156, a Magistrate is empowered under Section 190 of the Code for passing order to such investigation



by the Officer In-Charge of the concerned Police Station. The complaint filed by any aggrieved person is entertained under Section 190 of the Code on filing complaint. The Magistrate has two options before him, either to take cognizance on perusal of facts mentioned in the complaint constituting such offence or if finds that the complaint requires thorough investigation by the police agency for collection of evidence relating to the alleged offence otherwise the complainant can not produce such evidence before the court. In such situation, the Magistrate ought to have sent the complaint under Section 156(3) of the Code for institution of FIR for the purpose of investigation and submission of report.

8. In the present case, there was specific prayer made by the complainant that earlier the matter was reported to the police but FIR was not lodged so requested for sending the complaint for institution of FIR under Section 156(3) of the Code but the Chief Judicial Magistrate denied to send complaint for institution of FIR. The accusation in the complaint is regarding misappropriation and embezzlement of the college fund, which requires proper investigation by the police for collection of evidence, otherwise the complainant can not produce the evidence; so the investigation is appropriate choice.



9. The judgment in the case of Priyanka Srivastva Case (Supra) was passed by the Apex Court in different perspective as the complaint was filed by a person who was defaulter in paying loan to the Bank as such a case under SARFAESI Act was initiated unscrupulously against the officers of the Bank compelling the Bank officials for one time settlement. So the Apex Court held that Bank authorities duly discharging their duties to recover loan are required to be given protection from unwarranted harassment by abusing criminal justice system. Further, it is also held in that judgment that remedy available under Section 156(3) Cr.P.C. is not in a routine nature rather its exercise requires application of judicious mind. In the present case, the factual aspect is entirely different, hence in the opinion of the Court, the said ratio does not apply in facts of the present case rather the Court finds that ratio decided in the case of Jagarnath Verma (supra) squarely covers the case in hand. It is also held in the aforesaid case that an order passed by the Magistrate declining to entertain an application under Section 156 (3) of Cr.P.C. is not an interlocutory order rather it's an order of moment thereby avenue of a police investigation was foreclosed by passing such order. The court further elaborates that another option i.e., remedy under Section 200 stands in a



distinct and independent sphere, so a person may approach before the court under Section 397(1) by filing a revision application against the order declining investigation under Section 156(3) of the Code. However, another question was also formulated in that case whether the prospective accused has a right to be heard at the stage of hearing on the representation application or not. The finding of the court is affirmative declaring that there would be no justification to exclude the right of hearing to the accused as no order can be made to his prejudice unless an opportunity is provided of being heard for his defence. So in the present case, the Court finds that applying aforesaid ratio the revision application is maintainable against the order dated 29.01.2014 passed by the Chief Judicial Magistrate, Sasaram in Complaint Case No. 104 of 2011 because an important right of the complainant was declined by the Magistrate so that order is not an interlocutory one rather an order of moment affecting the rights of the party concerned because the effect of declining to send the complaint for institution of FIR, the avenue of a police investigation is foreclosed. However, the Court also finds that while disposing of the revision application by the impugned order, the accused persons, petitioners of this revision application were not given



opportunity of hearing. The impugned order indicates that only revisionist and the counsel of the State were heard, perhaps the accused persons were not the parties so giving opportunity to the accused in disposing of such matters in view of Section 401 (2) is mandatory in nature; hence on that account, the impugned order is not sustainable accordingly it is set aside however the court below is directed to hear the matter afresh giving opportunity to the accused persons of the complaint case and pass appropriate order in accordance with law.

10. The revision application stands disposed of with the aforesaid observation.

(Arun Kumar, J)

sujit/Gautam

AFR/NAFR	AFR
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