

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.29690 of 2015

Arising Out of PS. Case No.-2504 Year-2013 Thana- BHOJPUR COMPLAINT CASE
District- Bhojpur

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Virendra Kumar @ Birendra Kumar, Son of Late Kodai Ram, Resident of
Village - Ushari , P.S.- Mohaniya, District - Kaimur, the then Commissioner
of Ara Municipal Corporation, Bhojpur, Ara ... Petitioner
Versus

1. The State of Bihar
 2. Anjani Tiwary, Son of Narmadeshwar Tiwari @ Sodhan Tiwary, resident of
Village - Chandwan , P.S.- Ara Nawada, District- Bhojpur.
 3. Kamla Tiwari, Son of Late Heera Tiwary, Resident of Mohalla-Shanker
Nagar, (Uma Nagar), Chandwan , P.S. - Ara Nawada , District- Bhajpur
... Opposite Parties
- =====

Appearance :

For the Petitioner	:	Mr. Binod Kumar, Adv.
For the State	:	Mr. P.N.Pandit, APP
For O.Ps. No. 2 & 4	:	Mr. Arun Kumar Singh No. 4, Adv.

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CORAM: HONOURABLE THE CHIEF JUSTICE
ORAL ORDER

4 23-03-2018 Challenging an order, dated 30.04.2015, passed by

the Additional Sessions Judge, III, Bhojpur at Ara, in Criminal

Revision No. 137 of 2017, this application has been filed under

Section 482 of the Criminal Procedure Code.

A complaint case was filed before the Chief
Judicial Magistrate, Bhojpur at Ara, being Complaint Case No.
2504 (C) of 20013 and the learned Chief Judicial Magistrate
called for a report from the statutory authority and dismissed the
complaint case without recording statement of the complainant
under Section 200 of the Criminal Procedure Code. When the
complaint was dismissed, revision was filed and in the revision
after taking note of the provisions of law and the mandatory



requirement of Section 200 of the Criminal Procedure Code the learned revisional Court in paragraph 4 of the judgment directed in the following manner :

“4 : The Cr.P.C. under Chapter XV under headings complaints to Magistrates 200 postulates “A Magistrate taking cognizance of an offence on complaint shall examine upon oath the complainant and the witnesses present, if any and the substance of such examination shall be reduced to writing and shall be signed by the complainant and the witnesses and also by Magistrate”. “Provided that, when the complaint is made in writing the Magistrate need not examine the complainant and the witnesses”. Thus, within provision of section 200 it is incumbent upon the Magistrate taking cognizance of the offence of complaint to examine the complainant on oath and the witnesses. Here in the present case the learned CJM, Bhojpur, did not examine the complainant on oath which is a mandatory provision and he directly called for a report from the District Magistrate and on the basis of the report which the District Magistrate obtained from the Ara Municipal Commissioner this complaint has been dismissed which is not legal and proper.”

Accordingly, the revisional Court remanded the matter back to the Chief Judicial Magistrate for proceeding in accordance with law.



Even though learned counsel before me who is accused in the complaint case made vehement submission and argument to say that no offence is made out.

In my considered view cognizance for the offence under any of the provisions of the criminal law has not been taken as yet against the present applicant, it is to be taken after the statement under Section 200 of the Criminal Procedure Code is recorded and as cognizance is not taken for the present petitioner would have a cause of action for challenging the same after orders are passed taking cognizance in the matter.

In my considered view no indulgence into the matter is required to be taken at this stage. The petitioner may ventilate his grievance before the Chief Judicial Magistrate, Bhojpur at Ara, if he takes cognizance of the complaint and issue process of the petition.

With the aforesaid liberty to the petitioner, the matter stands **disposed off**.

(Rajendra Menon, CJ)

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