

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.35929 of 2016

Arising Out of PS.Case No. -417 Year- 2014 Thana -BAHADURPUR District- DARBHANGA

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Ram Shringar Ram son of Late Kusheshwar Ram. resident of village- Bariyaul,
P.S- Kamtaul, District- Darbhanga at present working as Class IV employee in the
office of L.N.Mithila University, Darbhanga

.... Petitioner/s

Versus

1. State of Bihar
2. Subita Devi wife of Binod Ram, resident of village-Ojhaul, P.S.-Bahadurpur,
District- Darbhanga

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Yogesh Chandra Verma, Sr. Advocate
Mr. Kaushalesh Choudhary, Advocate
For the State : Mr. Shaileendra Kumar, A.P.P

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
ORAL JUDGMENT
Date: 18-01-2018

This application under Section 482 of the Code of Criminal Procedure (for short 'the Cr.P.C.') has been filed by the petitioner for quashing the order dated 20.6.2016 passed in Cr. Revision No.212 of 2016 by the learned District and Sessions Judge, Darbhanga by which he has dismissed the revision application filed against the order dated 23.1.2016 passed by the learned Chief Judicial Magistrate, Darbhanga in Bahadurpur P.S. Case No.417 of 2014 by which cognizance of the offences under Sections 376/511 of the Indian Penal Code (for short 'the I.P.C.') has been taken against the petitioner.



2. The aforesaid Bahadurpur P.S. Case No.417 of 2014 was instituted on 24.12.2014 in respect of an occurrence of offence which took place on 21.1.2014 on the basis of written report of one Subita Devi. In her written report she alleged that at the relevant time of occurrence of the offence while she was picking up wood for fuel, in the meantime, the petitioner came in the garden to meet nature's call. He went near her and started cracking joke with her, which she objected, whereupon the petitioner caught her with ill intention and pushed her on the ground and tried to commit rape, but as the petitioner shouted loudly many people rushed towards her whereupon the petitioner fled away. She further alleged that she narrated the entire story to her family members whereupon her husband went to the village of the petitioner and complained to his brother-in-law Ram Chandra Ram about his sinful action, but he said that the petitioner is of bad moral character and, therefore, whatever action he wants to take against him, he is free to take. Thereafter, a complaint was filed before the police.

3. On the basis of the aforesaid statement of the victim, the F.I.R. was instituted and investigation was taken up. In course of investigation, the police recorded the statement of the witnesses and came to a conclusion that a false and frivolous case has been instituted against the petitioner. Thus, the police submitted final report holding



the case to be false against the petitioner, vide Final Form No.359/2015 dated 28.8.2015.

4. Though the police had submitted final form finding the case to be false, the learned Chief Judicial Magistrate, Darbhanga differing with the police report took cognizance of the offences punishable under Sections 376/511 of the I.P.C. and summoned the petitioner vide order dated 23.1.2016. The said order dated 23.1.2016 is under challenge in the present application.

5. Assailing the impugned order, Mr. Yogesh Chandra Verma, learned Senior Advocate submitted that the petitioner is a Class-IV employee of L.N. Mithila University, Darbhanga and at the time of occurrence he was present at his work place at University office. In course of investigation, the police had recorded statements of the several witnesses under Section 161(3) of the Cr.P.C. and after taking into consideration the relevant facts as also the fact that the written report was submitted after unexplained delay of three days, the investigating officer came to a conclusion that the prosecution was launched against the petitioner on the basis of a false report.

6. Mr. Verma submitted that it is true that the court of Magistrate has jurisdiction to differ with the police report and take cognizance of the offence, but for differing with the police report, there must be some material against the petitioner accused. In the



present case, the learned Magistrate while differing with the police report has passed a mechanical order without referring to any material against the petitioner in the order impugned. He submitted that summoning of an accused in a criminal case is a serious matter and the criminal law cannot be set into motion as a matter of course. He submitted that in absence of any material shown in the order passed by the learned Chief Judicial Magistrate against the petitioner, the revisional court ought to have interfered with the order passed by the learned Chief Judicial Magistrate, but the revisional court also erred in law by mechanically rejecting the revision application.

7. On the other hand, Mr. Shailendra Kumar, learned Additional Public Prosecutor appearing for the State submitted that no reason is required to be recorded at the time of taking cognizance by the court of Magistrate. If the Magistrate has found sufficient prima facie material to summon the accused, as would reflect from the order impugned, no illegality can be found with the order. He also submitted that though the present application has been filed under Section 482 of the Cr.P.C., the same is in the nature of the second revision, which is barred under Section 397(3) of the Cr.P.C.

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

9. It is true that if a revision has been preferred before the



court of Magistrate, a second revision before this Court would be barred in law. However, the inherent power under Section 482 of the Cr.P.C. is different from the power of revision under Section 397(3) of the Cr.P.C. Therefore, inspite of bar under Section 397(3) of the Cr.P.C. for a second revision, in appropriate cases, petition under Section 482 of the Cr.P.C. would be maintainable. It is the settled law that Section 482 of the Cr.P.C. cannot be used as a second revision petition and the High Court should exercise its inherent powers under Section 482 of the Cr.P.C. sparingly in rare cases where it feels that unless such power is used justice shall stand defeated. In case, the order passed by the revisional court is perverse, an application under Section 482 of the Cr.P.C. would be maintainable before this Court, as the same would amount to rare of the rarest case.

10. In the present case, I find that while differing with the police report, the learned Chief Judicial Magistrate has not whispered a word as to why he is differing with the police report. Simply referring in the order impugned that there is sufficient material to proceed against him, in the opinion of this Court, would not meet the legal requirement while differing with the police report. The order must reflect that there is material collected against the petitioner in course of investigation showing his prima facie involvement in the offence.



11. It is settled proposition of law that while differing with the police report submitted after investigation, the order passed by the learned Magistrate must reflect the application of mind. It must reflect that the learned Magistrate has looked into the materials or evidence collected during investigation indicating prima facie involvement of the accused in the offence. In this regard it would be of salience to note that for taking cognizance of the offence the Supreme Court in **M/s Pepsi Foods Limited and Another vs. Special Judicial Magistrate and Others reported in AIR 1998 SC 128**, has observed as follows.:-

“ Summoning of an accused in a criminal case is a serious matter. Criminal law cannot be set into motion as a matter of course. It is not that the complainant has to bring only two witnesses to support his allegations in the complaint to have the criminal law set into motion. The order of the Magistrate summoning the accused must reflect that he has applied his mind to the facts of the case and the law applicable thereto. He has to examine the nature of allegations made in the complaint and the evidence both oral and documentary in support thereof and would that be sufficient for the complainant to succeed in bringing charge home to the accused. It is not that the Magistrate is a silent spectator at the time of recording of preliminary evidence before summoning of the accused.



Magistrate has to carefully scrutinize the evidence brought on record and may even himself put questions to the complainant and his witnesses to elicit answers to find out the truthfulness of the allegations or otherwise and then examine if any offence is prima facie committed by all or any of the accused”.

12. Having considered the materials on record, I am of the opinion that the impugned order passed by the learned Chief Judicial Magistrate, Darbhanga does not reflect any application of judicial mind to reason out what transpired to him on the basis of which he differed with the opinion of the investigating officer filing final form in the case. I further find that the learned District and Sessions Judge, Darbhanga has also not appreciated the facts and law involved in the case while dismissing the revision application preferred by the petitioner and has passed a mechanical order without application of judicial mind.

13. Accordingly, the order dated 20.06.2016 passed in Cr. Revision No.212 of 2016 by the learned District and Sessions Judge, Darbhanga is quashed. Consequently, the order dated 23.01.2016 passed by the learned Chief Judicial Magistrate, Darbhanga in Bahadurpur P.S. Case No.417 of 2014 is also quashed.

14. The matter is remitted back to the Court of Chief Judicial



Magistrate, Darbhanga. He is directed to look into the materials collected in course of investigation and pass order in accordance with law in the light of the observations made hereinabove.

(Ashwani Kumar Singh, J)

Md.S./-

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