

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.20761 of 2015

Arising Out of PS.Case No. -144 Year- 2009 Thana -PATNA COMPLAINT CASE District-
PATNA

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Rishideo Rai, son of Nokhlal Rai, resident of Mohalla- Nasirgunj, Mithila Colony,
P.S.- Danapur, District- Patna.

.... Petitioner/s

Versus

1. The State of Bihar.
2. Raghuni Mahto, son of late Dhurkheli Mahto, resident of Mohalla- Nasirgunj,
Mithila Colony, P.S.- Danapur, District- Patna.

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Jagjit Roshan, Advocate
For the Opposite Party No.1: Mr. Jharkhandi Upadhyay, APP
For the Opposite Party No.2: None

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CORAM: HONOURABLE MR. JUSTICE SANJAY PRIYA

CAV JUDGMENT

Date: 24-05-2018

This application under Section 482 of the Code of Criminal Procedure has been filed for quashing the order dated 17.01.2015 passed by the Additional Sessions Judge, VIII, Patna, in Complaint Case No.144-C of 2009 (Sessions Trial No.241 of 2012) arising out of Beur P.S. Case No.66 of 2007 by which he has rejected the petition filed by the Petitioner under Section 227 of the Code of Criminal Procedure for his discharge.

2. Prosecution case, as per Informant, is that his son, Sunil Mahto, was a Driver and residing with him at Nasirganj, Mithila Colony. Accused, Rishideo Rai, came on 03.12.2007 at about 9.00 AM and asked his son to drive a tractor bearing



registration No. BR 1 AF 6470 for Hajipur carrying two *Chauki*, one bench and two chairs from Nasirganj. Son of the informant along with accused drove the Tractor for carrying the aforesaid articles to Hajipur. Son of the Informant did not return on that day till 12'O Clock in the night. When he went to the house of the accused and asked about his son, he got reply that he has gone to another place for carrying other articles and would return after two days. Son of the Informant did not return after two days. The Informant went to place of accused and enquired about his son then the accused replied that his son would never return. He told the Informant to take rupees one lac and keep mum. The Informant searched his son and found dead body of his son lying near *Bansghat*, which was recognized by the Informant in presence of police. The Informant has strong suspicion that accused has killed his son.

3. The Police registered Beur P.S. Case No.66 of 2007 for the offence under Section(s) 302, 201 Indian Penal Code. The police after investigation submitted final report under Section 173(2) Cr. P. C. stating there is no sufficient material for proceeding against the Petitioner. He was not sent up for trial. Aforesaid report was accepted by the learned Chief Judicial Magistrate, Patna, by order dated 13.01.2009.

4. The Informant had filed Protest Petition during



investigation of the case showing his doubt about fair investigation by the police. The Court below after submission of final form by the police treated the Protest Petition as Complaint and registered Complaint Case No.144-C of 2009. After enquiry in terms of provision of 202 Cr. P.C. and examining the Complainant on Solemn Affirmation as well as recording statement of three witnesses the Court below has found *prima facie* case against the Petitioner for the offence under Section(s) 302, 201 Indian Penal Code by order dated 01.07.2010.

5. The Petitioner filed petition for his discharge under Section 227 Cr. P.C., which was rejected by the Court below by the impugned order, which is under challenge in this application.

6. Learned counsel for the Petitioner has submitted that by order dated 13.01.2009, on one hand the Chief Judicial Magistrate has accepted final report submitted by the Investigating Officer and on the other hand, by the same order the learned Magistrate directed to register Protest Petition filed by the Complainant earlier as Complaint Case and on the basis of said Protest Petition Complaint Case No.144-C of 2009 was registered. The witnesses examined during enquiry have admitted that there was enmity between the deceased and the Petitioner. All the witnesses are family members and hearsay witnesses and their statement is based



on mere suspicion. The learned Magistrate without considering the materials on record only on the basis of strong suspicion took cognizance in mechanical manner by order dated 01.07.2010.

7. Counsel for the Petitioner has relied on a decision of our own High Court reported in **2015(3) PLJR 775 (Surendra Pandit Vs. State of Bihar)** and has argued that once final report has been accepted, question of keeping the matter alive through different channels does not arise.

8. Learned APP has appeared and submitted that there is no illegality in the impugned order.

9. Opposite Party No.2 has appeared through counsel, but during hearing of this application, none appeared on behalf of the Opposite Party No.2.

10. In the instant case, it appears that during pendency of investigation Protest Petition was filed by the Informant on 25.04.2008 (Annexure-3), wherein specific allegation has been made in para 4 that the Informant has bonafide belief that the police is not investigating the case properly in collusion with the accused and the police can also discharge Rishideo Rai from the case. Aforesaid Protest Petition was kept pending before the learned Magistrate during investigation being continued by the police. The police after investigation submitted final form on 31.07.2008



showing allegation against the accused Rishideo Rai to be false (Annexure-2). The learned Magistrate vide order dated 13.01.2009 directed to register Protest Petition filed earlier as Complaint Case and on that basis said Protest Petition was registered as Complaint Case No.144-C of 2009. Thereafter, learned Magistrate proceeded to hold enquiry in terms of Section 202 Cr.P.C. and after examining the Complainant on Solemn Affirmation and recording statement of three witnesses found *prima facie* case against the accused-petitioner for the offence under Section(s) 302, 201 Indian Penal Code.

11. The Division Bench of this Hon'ble Court in the case of *Munilal Thakur vs. State of Bihar* reported in *1984 PLJR 774* after relying on the judgment of Hon'ble Supreme Court reported in *(1982) 3 SCC 510 (Gopal Vijay Verma Vs. Bhuneshwar Prasad Sinha and others)* has held that a Magistrate even after accepting the final report of the police, can still take cognizance of an offence upon a Complaint or a Protest petition on same and similar allegations of fact.

12. Similarly, in another decision in the case of *Ishwar Dayal Singh & ors. Vs. State of Bihar and ors.* reported in *1987 BBCJ (HC) 119 Patna*, this Hon'ble Court has held that when the Magistrate accepts the police report seeing that the case against the accused was false, he can take cognizance of the offence upon



the Complaint or the Protest Petition on the same and similar allegation of facts.

13. Therefore, this Court is not satisfied with the argument of the learned counsel for the Petitioner that once final report is accepted, the cognizance cannot be taken of the offence upon the Complaint or the Protest Petition on the same and similar allegation of facts.

14. It seems that both these earlier judgments of the Hon'ble Court was not brought to the notice of this Court during hearing of case of *Surendra Pandit* as reported in **2015(3) PLJR 775**, which has been relied upon by the counsel for the Petitioner.

15. In this quashing application, Petitioner has challenged order dated 17.01.2015 by which the petition filed on his behalf under Section 227 Cr. P.C. to discharge has been rejected.

16. The learned Additional Sessions Judge has mentioned in the impugned order that Complainant, Raghuni Mahto, was examined under Section 200 Cr. P. C. and other witnesses were examined under Section 202 Cr. P. C., namely, Rambachan Singh, Satyadeo Mahto and Nandlal Mahto. They all have stated that last time accused Rishideo Rai came at the house of the informant, Raghuni Mahto, and asked his son, Sunil Mahto, to go with him as they were to go to Hajipur for loading some articles on Tractor No.



BR 1AF 6479. The Complainant and all the three witnesses have also stated before the Magistrate that when Sunil Mahto did not turn up, Informant made contact with Rishideo Rai (Petitioner) then he said that he should take rupees one lac and keep mum. Dead body of Sunil Mahto was recovered from a pit on a government land near the house of one Gobardhan Mistri, son of Suryadeo Mahto at Ram Krishna Nagar. Post mortem report was on record, which shows that death of Sunil Mahto was due to asphyxia and drowning.

17. Section 227 Cr. P. C. speaks that if, upon consideration of the record of the case and the documents submitted therewith, and after hearing the submissions of the accused and the prosecution in this behalf, the Judge considers that there is not sufficient ground for proceeding against the accused, he shall discharge the accused and record his reasons for so doing.

18. Provisions as laid down under Section 228 Cr. P. C. clearly provides the stage and manner in which Charge can be framed in the case.

19. For better appreciation Section 228 Cr. P. C. is quoted below:

“228. Framing of charge.— (1) If, after such consideration and hearing as aforesaid, the Judge is of opinion that there is ground for presuming that the accused has committed an offence which—

(a) is not exclusively triable by the Court of Session, he may, frame a charge against the accused and, by order, transfer the case for



trial to the Chief Judicial Magistrate, [or any other Judicial Magistrate of the First Class and direct the accused to appear before the Chief Judicial Magistrate, or, as the case may be, the Judicial Magistrate of the First Class, on such date as he deems fits, and thereupon such Magistrate] shall try the offence in accordance with the procedure for the trial of warrant-cases instituted on a police report;

(b) is exclusively triable by the Court, he shall frame in writing a charge against the accused.

(2) Where the Judge frames any charge under clause (b) of sub-section (1), the charge shall be read and explained to the accused and the accused shall be asked whether he pleads guilty of the offence charged or claims to be tried."

20. Therefore, from plain reading of Section 228 Cr.P.C., it appears that Charge can be framed in the case if Judge is of the opinion that there is ground for presuming that the accused has committed an offence.

21. In the instant case, the learned Additional Sessions Judge after looking into the Solemn Affirmation of the Complainant, statement of the witnesses recorded during enquiry as well as post mortem report and other materials on record have found that there is sufficient ground for presuming that the accused has committed an offence and, accordingly, dismissed the discharge petition filed by the Petitioner.

22. Therefore, this Court does not find any illegality in the impugned order passed by the learned Court below.

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



24. The Court below is directed to proceed with the case in accordance with law.

(Sanjay Priya, J)

J.Alam/-

AFR/NAFR	AFR
CAV DATE	02-04-2018
Uploading Date	25-05-2018
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