

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.51662 of 2014

Arising Out of PS.Case No. -941 Year- 2012 Thana -COMPLAINT CASE District- BANKA

- =====
1. Bibhav Singh, son of Sri Ashok Kumar Singh, resident of Mohalla- Bhawani Bhawan, Meena Bazar Colony Papharni Road Baunsi, Police Station- Baunsi, District- Banka

.... Petitioner/s

Versus

1. The State of Bihar,
2. Purushottam Prasad Singh, son of late Fakir Singh, resident of village- Dada, Police Station- Banka, District- Banka

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Anil Kumar, Advocate

For the Opposite Party/s : Mr. Mukesh Kumar Singh, APP

Mr. Anil Kumar Singh, Advocate

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CORAM: HONOURABLE MR. JUSTICE SANJAY PRIYA

ORAL JUDGMENT

Date: 19-04-2018

This application under Section 482 of the Code of Criminal Procedure has been filed for quashing the order dated 17.08.2012 passed by the Judicial Magistrate, 1st class, Banka, in Complaint Case No.941 of 2012 by which learned Magistrate after holding enquiry has found *prima facie* case against the petitioner for the offence under Section(s) 420 Indian Penal Code.

Counsel for the Petitioner has submitted that the impugned order of cognizance is bad in law as the same has been passed without proper consideration of the materials available on the record. Alleged occurrence is said to have taken place between



16.10.2009 to 25.11.2010 and the complaint was filed on 16.06.2012 and no explanation has been given by the Complainant on the point of delay in lodging of Complaint Petition. It is further submitted that the Court below without taking cognizance has transferred the case to the Court of Sri A. K. Thakur, Judicial Magistrate, 1st class, Banka.

Learned counsel for the Opposite Party No.2 has appeared and submitted that this petitioner was granted anticipatory bail by order dated 06.01.2014 passed in Cr. Misc. No.30569 of 2013 with direction to deposit the Bank Draft of the entire amount in the Court below, but the aforesaid order was not complied with. He has further submitted that process under Section 82-83 Cr. P.C. has already been issued against the Petitioner.

Counsel for the Petitioner submits that from the order dated 11.06.2012, it will be apparent that the Court below without taking cognizance has made over the case to Sri A. K. Thakur, Judicial Magistrate, 1st class, Banka, under Section 192 Cr. P. C. He has further submitted that the Court below in the impugned order has not given any reason for finding *prima facie* case against the accused person (Petitioner).

Counsel for the Complainant-Opposite Party No.2 submits that there is no illegality in the impugned order.



Having heard counsel for both the parties and also looking into the materials available on the record including Solemn Affirmation of the Complainant and the allegation made in the Complaint Petition as well as Xerox copy of the entire order-sheet of the Court below as annexed by the Petitioner as Annexure-5, this Court finds that the complaint was initially filed on 11.06.2012 and the same was made over to the Court of Sri A. K. Thakur, Judicial Magistrate, 1st Class, Banka, under the provision of Section 192 Cr. P.C. for enquiry or trial.

Section 190 Cr. P. C. very specifically describes the manner in which cognizance is taken by the Magistrate.

Section 191 Cr. P. C. speaks of transfer of case to any Magistrate after taking cognizance of the offence.

In the instant case, the Court below after taking cognizance on filing of the complaint case on 11.06.2012, has made over the case to the Magistrate for enquiry or trial under the provision of Section 192 Cr. P.C. Thereafter, the learned Magistrate has proceeded for enquiry under Section 202 Cr. P. C. and after finding *prima facie* case against the accused has directed for issuance of process in terms of provision of Section 204 Cr. P. C.

From bare perusal of Section 204 Cr. P. C., it will appear that it does not mandate the Magistrate to expressly state



reason for issuance of summons. It is nowhere mentioned in the Section that explicit narration of the same is mandatory.

This Court after looking into the Complaint Petition, Solemn Affirmation of the Complainant, which is available on record, does not find any illegality in the impugned order.

Accordingly, this Criminal Miscellaneous application is **dismissed.**

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

Interim order of stay dated 24.11.2017 is hereby vacated.

(Sanjay Priya, J)

J.Alam/-

AFR/NAFR	AFR
CAV DATE	N/A
Uploading Date	29-04-2018
Transmission Date	29-04-2018

