

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.1573 of 2016

Arising Out of PS. Case No.-52 Year-2013 Thana- KHARIK District- Bhagalpur

Manoj Kumar @ Manoj Das S/o late Jaggan Das Resident of Village-
Mirjafari, P.s Kharik, District Bhagalpur.

... .. Petitioner/s

Versus

1. The State of Bihar
2. Mohan Das S/o late Gunna Das
3. Anila Das S/o Nand Lal Das
4. Sunil Das S/o Nand Lal Das
5. Godiya Das S/o Nand lal Das
6. Nand lal Das S/o Kamal Das All resident of Village- Mirjafari, P.s kharik,
District Bhagalpur.

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Ashok Kumar Yadav
For the Opposite Party/s : Mr. Sahin Begum (App)

CORAM: HONOURABLE MR. JUSTICE SANJAY PRIYA
ORAL JUDGMENT

Date : 12-09-2018

The petitioner has challenged the order dated 17.4.2014 passed by learned SDJM, Naugachia in Kharik P.S. case no. 52 of 2013 by which learned Magistrate has directed to proceed under Sections 182 and 211 against petitioner who was complainant in the original case i.e. complaint case no. 97 of 2013.

Heard learned counsel for the petitioner, learned counsel for the State and learned counsel for the opposite party no.2.

Learned counsel for the petitioner has submitted that police after investigation of the aforesaid complaint case no. 97 of 2013 which was sent to police station under Section 156(3)



Cr.P.C. submitted final form against all the accused persons. Thereafter, the I.O. has filed complaint petition in the court below. The learned court below by impugned order dated 17.4.2014 accepted final form and on the basis of complaint filed by the I.O., ordered to proceed under Sections 182 and 211 of the IPC against the petitioner(complainant). Learned counsel for the petitioner(complainant) has submitted that petitioner(complainant) was not present on 17.4. 14 and the impugned order has been passed in his absence without affording opportunity to hear him.

Learned counsel for the opposite party no.2, on the other hand, has submitted that there is no illegality in the impugned order. The revision has also been filed by the petitioner(complainant) against the order dated 17.4.14 passed by the learned Magistrate which was rejected by 3rd Additional District and Sessions Judge by order dated 30.3.15 passed in Cr. Rev. No. 142 of 2014.

This Court after hearing the submission of the parties and on perusal of the impugned order(s) as well as the materials available on record finds that initially complaint case No. 97 of 2013 was filed by the complainant against the accused persons (opposite party nos. 2 to 6) which was sent to police station



u/s 156(3) Cr.P.C. for registration of the FIR and thereafter Kharik P.S. case no. 52 of 2013 was got registered. The police after investigation found the case false and submitted final form in the case exonerating the accused persons (opposite party nos. 2 to 6). The police has in the aforesaid final form recommended for taking action against the complainant for filing false case and to initiate proceeding u/s 182 and 211 IPC.

It appears that when the final form was put up before the learned Magistrate for hearing on 17.4.2014 then on the same date one complaint was also filed by the I.O. before the learned Magistrate. The learned Magistrate on the same day i.e. on 17.4.2014 after accepting the final form submitted by the police ordered to proceed under Sections 182 and 211 of the IPC against this petitioner(complainant of the original case) on the basis of complaint filed by the I.O.. It is mentioned in the order dated 17.4.2014 that the complainant is not present at the time of hearing of the final form submitted by the police. As such from impugned order itself it is apparent that no opportunity was given to the petitioner(complainant) by the learned court below to file reply to the complaint filed by the I.O. of the case.

It also appears that the learned court below without



holding any enquiry only on the basis of complaint filed by the I.O. on 17.4.2014 has ordered to initiate proceeding under Sections 182 and 211 of the IPC against the petitioner(complainant).

The revisional court has rejected the petition filed by the petitioner challenging the order dated 17.4.14 passed by the learned Court below.

The Sessions Judge has mentioned in the impugned order dated 30.3.15 that from perusal of the LCR and the documents as well as the fact of the case it appears that occurrence has certainly taken place but not stated nature of occurrence which means that petitioner himself does not know what offence has been made and contradictory statement has been made in this revision petition.

This Court from perusal of the revisional order finds that the same has been passed without application of mind in mechanical manner.

This Court, after looking into both the orders finds that I.O. has filed complaint against the complainant making prayer with the Court below to initiate proceeding under Sections 182 and 211 of the IPC against the complainant of the case after filing of the final form. The learned Magistrate



has without holding proper enquiry only on the basis of complaint filed by the I.O., has passed the impugned order dated 17.4.2014 without hearing the complainant.

Therefore, both the orders dated 17.4.2014 passed by learned SDJM, Naugachia in Kharik P.S. case no. 52 of 2013 and the revisional order dated 30.3.15 passed by learned 3rd Additional District and Sessions Judge, Naugachia in Cr. Rev. no. 142 of 2014 is hereby quashed. Consequently, lodging of the case against this petitioner by the learned Magistrate on 17.7.2014 under Sections 182 and 211 of the IPC is also quashed.

Accordingly, this Cr. Misc. application is allowed.

(Sanjay Priya, J)

shyambihari/-

AFR/AFR	AFR
CAV DATE	N/A
Uploading Date	19.9.2018
Transmission Date	19.9.2018

