

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.10370 of 2015

Arising Out of PS. Case No.-210 Year-2011 Thana- MANER District- Patna

Sanjeet Kumar Son of Late Pramod Kumar Resident of Village Kunlti-Ashthama District Nalanda. At present Executive Engineer Project Electric Supply division S. B.P.D. C.L. Jahanabad. P.S. District- Jahanabad.

... .. Petitioner/s

Versus

The State Of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr.Love kush Kumar

For the Opposite Party/s : Mr.J.Upadhyay, App

CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

ORAL ORDER

2 08-05-2019 Heard learned counsel for the parties.

2. The present application under Section 482 of the Code of Criminal Procedure, 1973 (hereinafter referred to as 'the Code') has been filed on 10.03.2015, challenging an order dated 20.04.2012, passed by the learned ACJM, Danapur in Maner P.S. Case No. 210/2011/G.R. No. 2240 of 2011, pending in the Court of learned Judicial Magistrate, Danapur, whereby he has taken cognizance of the offence punishable under Sections 302/34 of the Indian Penal Code and has issued summonses against five persons, including this petitioner.

3. It is the petitioner's case that the police, after completion of investigation, have submitted police report and though found incriminating materials against co-accused Rakesh



Kumar Thakur, finding no such evidence against the present petitioner other co-accused persons were not sent up for trial. The Court below, however, on perusal of the police report and other materials collected in course of investigation has, after taking cognizance, decided to proceed against this petitioner also by ordering for issuance of summonses.

4. Learned counsel appearing on behalf of the petitioner, assailing the impugned order has submitted that the impugned order does not disclose any application of mind while differing with the report of the police, to the extent the same relates to summoning the petitioner. According to him, the Court below in a very casual and cavalier manner has summoned this petitioner also by impugned order though there was absolutely no material available before him which could have warranted summoning of the petitioner.

5. He has relied on Supreme Court's decision in case of **Pooja Ravinder Devidasani Vs. State of Maharashtra and another** reported in (2015) 3 SCC (Cri) 378 and in case of **Sampat Singh Vs. State of Haryana** reported in 1993(2) PLJR (SC) 47. Relying on paragraph 22 of the Supreme Court's decision in case of **Pooja Ravinder Devidasani Vs. State of Maharashtra and another** (supra), he has submitted that



summoning of an accused in a criminal case is a serious matter and since the impugned order of the Magistrate does not reflect his application of mind to the facts of the case and law applicable thereto, this Court should, in the interest of justice, interfere and quash the order impugned, exercising power under Section 482 of the Code. He contends referring to decision in case of **Sampat Singh Vs. State of Haryana** (supra), that once a police report is submitted under Section 173 of the Code, a duty is enjoined upon the Court to scrupulously scrutinize the police report and the accompaniments by applying its judicial mind, either to accept or reject the police report. He has submitted that since the learned Magistrate has failed to scrupulously scrutinize the police report, whereby the petitioner was not sent up for trial in the absence of any incriminating material collected in course of investigation, on perusal of the impugned order, I find substance in the submission made on behalf of the petitioner.

6. It is true that the Court below has recorded his perusal of the police report. He has, however, not said anything in his order as to what materials were there against this petitioner. Though it is true that the plea which the petitioner has taken in the present application could be taken by him by



making an application under Section 245 of the Code. However, this impugned order, in my opinion, suffers from complete non-application of mind. The same is set aside, accordingly.

7. Learned counsel for the petitioner has informed that there has not been any progress at all before the Court below in the present case after issuance of the summonses and charges have not been framed. Keeping this background in mind the present order has been passed.

8. The matter is remanded back to the Court below to pass an order afresh on the police report to the extent same relates to summoning this petitioner.

9. This application is allowed accordingly with the observation as above.

(Chakradhari Sharan Singh, J)

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