

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No. 2323 of 2017

Arising Out of PS. Case No.-1249 Year-2012 Thana- COMPLAINT CASE District- Supaul

Lalan Kumar son of Late Ramdeo Pawan resident of village - Mathupur, P.S. - Khagaria, District - Khagaria, at present residing at V. No. 04 Kishanpur Road, P.S. and District Supaul.

... .. Petitioner/s

Versus

1. State Of Bihar and Anr
2. Mohan Yadav Son of Late Ghuter Yadav resident of Therbitiya, Police Station - Kisanpur, District - Supaul.

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr. Ansul, Mr.Arun, Mr. Navneet Kumar, Adv
For the Opposite Party/s	:	Mr. Anand Kishore Choudhary, APP
For OP No.2	:	Mr. Dhananjay Kumar Tiwary, Adv.

CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI
ORAL ORDER

6 26-04-2019 Heard learned counsel for the petitioner as well as learned APP along with learned counsel for the informant/OP No.2.

2. Petitioner is aggrieved by an order dated 26.04.2013 whereby and whereunder he along with Surendra Yadav has been summoned to face trial for an offence punishable under Sections 406, 420, 504/34 of the IPC by the learned Chief Judicial Magistrate, Supaul in Complaint Case No. 1249(C)/2012.

3. From perusal of the complaint petition, it is evident that a raid was conducted by the Electricity Department whereunder complainant was found stealthily consuming energy



causing loss to the Department to the tune of Rs. 1,50,000/-. Others were also found whose are not relevant for the present purpose.

4. In the aforesaid background, this complaint petition has been filed by the OP No.2 against so many officials of the Electricity Department wherein, it has been alleged that petitioner Lalan Kumar and Surendra Yadav, employees of Electricity Department succeeded in procuring Rs. 25,000/- from him on the pretext of getting the electric line connection and further, on their assurance, the complainant had also purchased electric meter along with starter, but as he could not get electric connection so persistently complained and in the aforesaid background, Surendra Yadav and the petitioner, Lalan Kumar in connivance with other officials of the Electricity Department got a raid conducted and during course thereof, managed the evidence. The complainant who was at the police station for getting the Tempo released, returned along with his son, then his wife disclosed. He met with these persons who demanded Rs. 50,000/- and as the payment was not made, the case has been instituted.

5. From the record, it is evident that complaint was filed on 18.12.2012. From perusal of the order-sheet dated



18.12.2012, it is evident that complainant was not at all examined under Section 200 CrPC. However, the matter was referred to SDM, Supaul in consonance with Section 202 of the CrPC for holding an investigation and submit a report. Though, the report is not at all found favourable to the complainant, even then, the learned lower court by the order impugned took cognizance of the offence in a manner as indicated hereinabove.

6. So, from the order-sheet, it has become conclusively crystal clear that complainant has not been examined on SA. For want of non examination of complainant on SA whether an order under Section 202 CrPC could be passed and for that, it looks better to incorporate Section 202 of the CrPC which is as follows:-

202. Postponement of issue of process.

(1) Any Magistrate, on receipt of a complaint of an offence of which he is authorised to take cognizance or which has been made over to him under section 192, may, if he thinks fit, postpone the issue of process against the accused, and either inquire into the case himself or direct an investigation to be made by a police officer or by such other person as he thinks fit, for the purpose of deciding whether or not there is sufficient ground for proceeding: Provided that no such direction for investigation shall be made,--

(a) where it appears to the Magistrate that the offence complained of is triable exclusively by the Court of Session; or

(b) where the complaint has not been made by a Court, unless the complainant and the witnesses present (if any) have been examined on oath under section 200.



(2) In an inquiry under sub- section (1), the Magistrate may, if he thinks fit, take evidence of witnesses on oath: Provided that if it appears to the Magistrate that the offence complained of is triable exclusively by the Court of Session, he shall call upon the complainant to produce all his witnesses and examine them on oath.

(3) If an investigation under sub- section (1) is made by a person not being a police officer, he shall have for that investigation all the powers conferred by this Code on an officer- in- charge of a police station except the power to arrest without warrant.

7. From perusal of Clause-1(b), it is evident that examination of complainant on SA in accordance with Section 200 CrPC, is a condition precedent for directing an enquiry under Section 202 CrPC. On account of flouting of the mandate of law, the order impugned would not survive. Consequent thereupon, the same is set aside.

8. Petition is allowed.

(Aditya Kumar Trivedi, J)

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