

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.44744 of 2017

Arising Out of PS. Case No.-77 Year-2010 Thana- CHAINPUR District- Bhabhua (Kaimur)

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Hari Kumar @ Hari Kumar Singh @ Sonu Singh Son of Late Ramdas Singh, aged about 40 years, Resident of Village and Post- Khuruhunja, Pargana Majwar, P.S. Baburi, District Chandauli, U.P. presently residing at A- 37, Ramprastha Colony, P.S. Surya Nagar Link Road, Ghaziabad, U.P.

... .. Petitioner/s

Versus

1. State Of Bihar
2. Mahatma Satsevand Disciple of Swami Satyanand Ji Maharaj, R/o Brahma Vidyalaya and Ashram, Chhotka Rajpur, P.S.- Simari, District- Buxur. Present at- Branch Ashram of Brahma Vidyalaya and Ashram, Nandana, P.S.- Chainpur, District- Kaimur.

... .. Opposite Party/s

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Appearance :

For the Petitioner/s	:	Mr. Prabhakar Singh Advocate
For the State	:	Mr. Jharkhandi Upadhyay APP
For the Opposite Party No. 2 :		Mr. Harsh Singh Advocate

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CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR
ORAL ORDER

12 13-02-2019 Heard Mr. Prabhakar Singh, learned counsel for

the petitioner and Mr. Harsh Singh, learned counsel for the

Informant / Opposite Party No. 2.

The petitioner, who was made an accused in

connection with Chainpur P. S. Case No. 77 of 2010 dated

02.07.2010, has challenged the order dated 24.07.2017



passed in Criminal Revision No. 86 of 2016, whereby the order framing charge against the petitioner under Sections 120(B) and 427 of the I.P.C. dated 17.05.2016 passed by the learned Judicial Magistrate has been set aside and the case has been remanded to the learned Magistrate for writing out a fresh order in accordance with law.

Without giving unnecessary details, it is noted that the petitioner was made an accused in the aforesaid case with the allegation that in the process of destruction of the Ashram of the informant, the petitioner and others had conspired and had been given financial support to the maelfactors. The investigation of the case ended in submission of charge-sheet under various sections of the Indian Penal Code, namely, 147, 148, 149, 323, 324, 380, 120-B, 427 and 452. In the aforesaid Sections, cognizance was taken against the petitioner and other accused persons.

The prayer of the petitioner for discharge was rejected and against the aforesaid order refusing to discharge the petitioner, the petitioner travelled upto the Supreme Court with no success.



Thereafter, by order dated 17.05.2016, charges were framed against the petitioner under Sections 120-B and 427 of the I.P.C. only.

As noticed above, the informant challenged the aforesaid order on the ground that charge-sheet had been submitted in other Sections also and against the other accused persons, charges have been framed under all the sections in which charge-sheet has been submitted.

The aforesaid Criminal Revision No. 86 of 2016 preferred by the Opposite Party No. 2 / informant was contested by the petitioner on the ground that such revision was not maintainable, in the first instance, because the order being interlocutory in nature and secondly, the informant would get the opportunity of seeking alteration of charge after examination of some of the witnesses or progress of the trial.

The aforesaid major ground of contest by the petitioner was brushed aside by the learned revisional court on the ground that the charge-sheet has been submitted under various Sections of the I.P.C. and if the petitioner was



found to have played the role of a conspirator, then perhaps, it was incumbent upon the learned Magistrate to have framed charges against the petitioner under all such sections in which charge-sheet had been submitted and for which, charges have been framed against other accused persons.

After recording his disagreement with the order framing charge against the petitioner, the learned revisional court, in his wisdom, after setting aside the aforesaid order, remanded the matter before the learned Judicial Magistrate to pass a fresh order in accordance with law after giving sufficient opportunity to both the parties.

Mr. Prabhakar Singh, learned advocate appearing for the petitioner has submitted that there was no reason for interfering with the aforesaid order without recording the reason for the remand. Even if charge-sheet has been submitted under various Sections of I.P.C., the charge is only framed against an accused persons with respect to the materials against him. In the entire investigation papers, learned counsel for the petitioner urges, the only allegation against the petitioner is of having



conspired with the other accused persons and of providing monetary support to the accused persons. This allegation also is by way of an assessment of the informant that the petitioner had played a part of a conspirator. If the entire allegation is accepted to be true, the only material, which could have weighed with the learned Magistrate in framing charge, it has been argued, was the element of conspiracy and that also for causing mischief damaging an amount of Rs. 50. Without any discussion on any material for the revisional court to have deffered with the opinion of the learned Magistrate, cannot be sustained in the eyes of law.

As opposed to the aforesaid contention raised on behalf of the petitioner, Mr. Harsh Singh, learned advocate appearing for Opposite Party No. 2 has submitted that approximately 200 persons had arrived at the Ashram and ransacked the building and caused huge damages. This would not have been possible without the active support from behind by the petitioner and his likes, who not only hatched conspiracy for commission of such acts but also rendered monetary support to the miscreants. In such an



event, framing charge against the petitioner only under Section 427 and 120-B tantamounts to soft handling of the entire allegation against the petitioner, which is legally not sustainable. It is precisely for this reason that the order framing charge has been set aside and the matter has been remanded to the court below for writing out a fresh order.

The additional argument raised on behalf of the Opposite Party No. 2 is that if charges are not framed in the Sections in which cognizance has been taken, it would be deemed to be a discharge in the aforesaid Sections.

Any discussion on the aforesaid proposition would not be relevant in the present case as an order framing charge, though may not in strictest sense of the term be interlocutory because the trial proceeds on the basis of the aforesaid charge, but the order is not irreversible as there is a provision of alteration of charge with the progress of the trial. No cogent reason appears to have been assigned by the learned revisional court for having remanded the matter to the court of learned Magistrate. Nonetheless, because of the aforesaid order of remand, the trial of other



accused persons also have been held up despite there being no order of stay over the process of trial by any court, much less this Court.

This Court does not wish to interfere with the aforesaid order impugned only on the ground of the efflux of time and that the order of remand clarifies that both the parties would be heard before any fresh order would be passed by the learned Magistrate. Though this Court is reluctant to interfere with the order of remand, but by way of abundant precaution, clarifies that the learned Magistrate shall, without any delay, pass a fresh order in accordance with law after affording opportunity of hearing to the contesting parties. The remand order would serve as a reminder to the Court that he is not to tow or be influenced by any particular line of defence or opposition and shall pass order objectively and in accordance with law after looking at the materials against the petitioner and the relevance of framing charge as on date against each accused person, including the petitioner.

With the aforesaid observation / direction, this



petition stands disposed off.

(Ashutosh Kumar, J)

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