

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.4460 of 2017

Arising Out of PS. Case No.-1063 Year-2014 Thana- KHAGARIA COMPALINT CASE
District- Khagaria

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Mantosh Kumar, son of Sri Biranchi Prasad, Resident of Khutiya, P.s.- Mansi,
District- Khagaria

... .. Petitioner/s

Versus

1. The State of Bihar
2. Jawahar Yadav, son of Parmeshwari Yadav, Resident of village- Khutiya,
P.s.- Mansi, District- Khagaria
3. Karulal Yadav, son of Late Sita Ram Yadav, Resident of village- Khutiya
Matihani, P.s.- Mansi, District- Khagaria
4. Ashok Yadav, son of Dhuri Yadav, Resident of village- Chakhussaini, P.s.-
Mansi, District- Khagaria
5. Virendra Gupta
6. Umesh Gupta
7. Arjun Gupta, All sons of Late Mahendra Gupta Bangali, Resident of village-
Chakhussaini, P.s.- Mansi, District- Khagaria
8. Om Prakash Sah, son of Ramottar Sah, Resident of village- Chakhussaini,
P.s.- Mansi, District- Khagaria
9. Bashistha Kumar, son of Bano Prasad, Resident of village- Khutiya, P.s.-
Mansi, District- Khagaria

... .. Opposite Party/s

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Appearance :

For the Petitioner/s	:	Mr. Suraj Narain Yadav-Advocate
For the O.P.	:	Mr. Jai Kishor Poddar-Advocate
For the State	:	Mr. Sujit Kumar Singh-A.P.P.

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI
ORAL ORDER

2 03-05-2019 Heard learned counsel for the petitioner as well as

learned Additional Public Prosecutor along with learned counsel

for the Opposite Parties.

Petitioner, who is the complainant of Complaint Case

No.1063C of 2014 is aggrieved by an order dated 30.11.2016



passed by the Chief Judicial Magistrate, Khagaria, whereby and whereunder the complaint has been dismissed observing that it gives the fragrance of civil cause.

On perusal of successive order sheet (Annexure-2), it is apparent that complaint petition was filed on 16.09.2014 and so, it was directed to be listed on 17.09.2014. The order dated 17.09.2014 speaks *“Abhilekh Ka Ablokan Kiya. Da. Pra. Sa. Ki Dhara 190 Ke Antargat Apradh Ka Sangyan Liya Jata Hai.”*

The relevancy of the aforesaid order is to be properly appreciated. Under the Cr.P.C., there happens to be no definition of the ‘cognizance’. In legal parlance, it denotes application of judicial mind. That means to say, whenever a matter is taken up for consideration at the end of the Magistrate, it would tantamount to take cognizance, but in true sense, it happens to be an activity of the Magistrate, by which he takes into notice with regard to the allegations so coming out either from the F.I.R. followed with chargesheet (case diary), complaint followed with S.A. (in some cases an inquiry under Section 202 Cr.P.C.) and further, proper identification of an accused responsible therefor and for that, Section 190 of the Cr.P.C. takes care of. That being so, whenever order is passed in accordance with Section 190 of the Cr.P.C., the same would be summoning an accused for the purpose of facing of trial for an



offence properly identified by the Court. For better appreciation,

Section 190 of the Cr.P.C. is quoted below:-

190. Cognizance of offences by Magistrates.

(1) Subject to the provisions of this Chapter, any Magistrate of the first class, and any Magistrate of the second class specially empowered in this behalf under sub- section (2), may take cognizance of any offence-

(a) upon receiving a complaint of facts which constitute such offence;

(b) upon a police report of such facts;

(c) upon information received from any person other than a police officer, or upon his own knowledge, that such offence has been committed.

(2) The Chief Judicial Magistrate may empower any Magistrate of the second class to take cognizance under sub- section (1) of such offences as are within his competence to inquire into or try.

Now, the second limb of present controversy is whenever a complaint is filed in accordance with Section 200 of the Cr.P.C., the Magistrate has got three options, the first one to examine the complainant on S.A. and to take cognizance in accordance with Section 190 of the Cr.P.C., to examine or not based upon wishes of the Magistrate, who could transfer the complaint for holding an inquiry under Section 202 Cr.P.C.,



under Section 192 Cr.P.C., or to direct for registration and investigation of the complaint as provided under Section 156(3) of the Cr.P.C. Furthermore, there happens to be an exception whenever complainant is a government servant, he is not required to be examined on S.A. In the aforesaid background, order of cognizance in terms of Section 190 of the Cr.P.C. is to be taken only after having S.A., save and except where the complainant happens to be the government servant. In this particular case, complainant is an individual whereupon, before passing of the order dated 17.09.2014, the learned lower Court should have examined the complainant on S.A. and that being so, the subsequent event including the order impugned is found nullity in the eye of law.

Consequent thereupon, is set aside. Petition is allowed. Matter is remitted back to the learned lower Court to pass an appropriate order in accordance with law.

(Aditya Kumar Trivedi, J)

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