

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.83947 of 2019

Arising Out of PS. Case No.-55 Year-2018 Thana- ISUAPUR District- Saran

BIJENDRA KUMAR @ BIJENDRA KUMAR RAY S/o Maneger Ray R/o
village- Nianiyar, P.S.- Isuapur, Distt.- Saran Petitioner
Versus

The State of Bihar Opposite Party

Appearance :

For the Petitioner/s : Mr.Nalin Kumar, Advocate
For the Opposite Party/s : Mr.Jharkhandi Upadhyay, APP

CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL ORDER

2 19-12-2019 Heard learned counsel for the petitioner and learned
APP for the State.

In the nature of the order proposed to be passed after
hearing learned counsel for the petitioner and learned APP for
the State, the matter is not required to be adjourned.

The petitioner in this case is seeking to challenge the
order dated 01.04.2019 passed in Isuapur P.S. Case No. 55 of
2018 by learned S.D.J.M., Saran whereby the learned
Magistrate took cognizance against the petitioner for the
offences punishable under Sections 302/34 of the Indian Penal
Code.

The only grievance of this petitioner is that while after
investigation the Police did not find any sufficient material to
proceed thereto to prove the allegation against the petitioner and
placed him in the column of accused 'not sent-up for trial', even



though the learned S.D.J.M., Saran was of the opinion that there was sufficient materials to proceed against the petitioner, the learned S.D.J.M., should have at least indicated the kind of material which he found in the police report.

Learned counsel for the petitioner submits that the learned S.D.J.M., Saran has power in law to differ with the Police report but such difference of opinion must be based on certain materials which he may notice from the Police report. In his submission, power to differ with the Police report is one thing and exercise of that power in a judicious manner is quite different and a distinct thing.

In this case it is submitted that the learned S.D.J.M. has passed the impugned order as respect this petitioner in a routine and in a mechanical manner without applying his judicious mind to the materials on the record. Nothing is indicated to show that there are sufficient material to proceed against the petitioner.

Learned counsel for the State has after going through the impugned order submitted that some indications should have been given by the learned S.D.J.M., Saran while differing with the final report as to the materials present on the record and in such circumstance the learned S.D.J.M., Saran may be directed



to pass a fresh order after considering the materials on the record.

In the aforesaid view of the matter and having heard learned counsel for the petitioner and learned APP for the State, this Court finds from the impugned order that the Police after investigation has not found any material to prove the allegations against this petitioner, therefore, while differing with the Police report the learned S.D.J.M., Saran was obliged to record at least those materials which he found in the police report and on the basis of which he was of the view that there are sufficient materials to proceed against the petitioner. It is well settled in law that the accused shall not be aggrieved by the order taking cognizance he may be aggrieved by the order issuing process against him in this case. The petitioner is aggrieved not by the order taking cognizance as the cognizance is always taken of the offence not of the offender. His grievance is limited to the order issuing summons to him.

This Court finds substance in his submissions, there being no indication of the materials to show that there are sufficient materials to proceed against the petitioner, as is required to be there in terms of Section 204 Cr.P.C. for purpose of issuance of summons to an accused, this Court hereby sets



aside the impugned order dated 01.04.2019 passed in Isuapur P.S. Case No. 55 of 2018, G.R. No. 3517 of 2018 by learned S.D.J.M., Saran in so far as he directs issuance of summon to the petitioner.

Learned S.D.J.M., Saran at Chapra shall now proceed to peruse the records and pass a fresh order on the basis of the materials available on the record in relation to the petitioner.

This application stands allowed to the extent indicated above.

(Rajeev Ranjan Prasad, J)

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