

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.539 of 2021

Arising Out of PS. Case No.-251 Year-2020 Thana- KUMAR KHAND District- Madhepura

Mukesh Kumar S/o Shri Baidyanath Yadav R/o Village- Tikuliya, Ward No. 14, Post- Bishanpur Bazar, P.S.- Kumarkhand, District- Madhepura- 852112.
... .. Petitioner/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Chandan Kumar Mandal
For the Respondent/s : Mr. Addl. Public Prosecutor

CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR SINGH
ORAL ORDER

2. 27-09-2021 Heard learned counsel for the parties.

2. This criminal revision has been preferred against order dated 12.01.2021 passed by learned Sessions Judge, Madhepura in Sessions Trial No. 07 of 2021 / C.I.S. No. 07 of 20201 (arising out of Kumarkhand P.S. Case No. 251 of 2020), whereby the learned Sessions Judge has framed the charges against the petitioner under Section 364(A) read with Section 34 of the Indian Penal Code.

3. The brief fact of the case is that on the basis of written statement of one Sudhir Kumar Suma, an F.I.R., bearing no. 251/2020 dated 25th Sept. 2020, U/s 364A/34 I.P.C. at P.S. Kumarkhand, was lodged for kidnapping of his son against unknown person. Police after investigation submitted chargesheet on 30.09.2020 under Sections 364(A)/34 of the Indian Penal Code against petitioner and other three co-accused



persons and the learned court below, after taking cognizance, has framed the charge on 12.01.2021, which is under-challenge before this Court.

4. The petitioner has challenged the impugned order dated 12.01.2021 passed by learned Sessions Judge, Madhepura in Sessions Trial No. 07 of 2021 (arising out of Kumarkhand P.S. Case No. 251 of 2020) on the ground that without complying with mandatory provisions of law provided under Section 207 / 208 of the Cr.P.C. and without supplying the copy of police paper and other relevant documents, the learned Sessions Judge has framed the charge against petitioner and other three co-accused persons under Section 364(A) read with Section 34 of the Indian Penal Code. It is further submitted that under the law, the court below was required to supply the documents, which were enumerated under Section 207 / 208 of the Cr.P.C., before framing of the charge, but the same has not been supplied and charges have been framed. However, it is fairly submitted that after framing of charge, the case was transferred to the court of learned Addl. Sessions Judge – III, Madhepura and said transferee court was pleased to supply the copy of chargesheet on 08.03.2021. Lastly, it is submitted by the counsel for the petitioner that since the charges have been



framed by the court below without compliance of mandatory provisions of law, the impugned order is fit to be quashed.

5. However, counsel for the State vehemently opposed the revision application and submitted that non-supply or late supply of police paper etc. under Section 207 / 208 of the Cr.P.C. is an error / irregularity, curable under Section 465 of the Cr.P.C. It is further submitted that in this case, police paper has already been supplied to the petitioner just after framing of the charge and moreover, petitioner has not alleged or averred in the entire petition that any prejudice has been caused to the petitioner due to non-supply of police paper and other documents. In this case, only charge has been framed and trial is yet to begin and as such, there is no occasion for the petitioner to make any grievance with regard to late supply of police paper.

6. Section 207 of Cr.P.C. deals with cases where the proceeding has been initiated on the police report, whereas Section 208 of Cr.P.C. deals with cases instituted otherwise than the police report exclusively triable by the court of Sessions.

7. On bare perusal of Section 207 and 208 of Cr.P.C., it would be apparent that both sections enumerate various documents, copies of which should be supplied to the accused.



The object to supply copies of those documents is to ensure that the accused gets adequate information about the charge and on the basis of materials supplied to him, prepare his defence well in advance before the trial. No doubt, the refusal or non-supply of copies of documents referred to under Section 207 and 208 of Cr.P.C. is a serious irregularity still, however it is an error or irregularity curable under Section 465 of the Cr.P.C. and does not vitiate the trial. But, if the accused satisfies the court that prejudice has been caused to him by non-supply of such documents, the court will set aside the order.

8. Law is settled in this regard. The effect of non-supply of the copies has been considered by the Apex Court in the cases of **Noor Khan vs. State of Rajasthan**, reported in **AIR (1964) SC 286** and **Shakila Abdul Gafar Khan (Smt.) vs. Vasant Raghunath Dhoble and Anr.**, reported in **(2003) 7 SCC 749** and it was held that non-supply of documents or police paper is not necessarily prejudicial to the accused. The Court has to give a definite finding about the prejudice or otherwise.

9. In this case, though police paper has not been supplied before framing of charge, but the same has already been supplied to the petitioner after framing of the charge by the



transferee court. In the entire petition, petitioner has not averred that any prejudice has been caused to the petitioner due to non-supply of police paper before framing of the charge. Even, in course of argument, counsel for the petitioner failed to demonstrate or show that any prejudice caused to the petitioner or any reasonable probability of prejudice. In absence of any prejudice caused to the petitioner or any probability of prejudice to the petitioner, the same cannot be held to be illegal. There is substantial compliance of provisions of law inasmuch as the police paper has been supplied to the petitioner just after framing of the charge and as such, framing of the charge will not be vitiated, even if, there is any technical breach of any provision of law provided that such breach has caused any prejudice or failure of justice.

10. Considering the rival submissions of the parties, materials available on record and the provisions of law laid down by the Apex Court, this Court does not find any merit in the petition and accordingly, it stands dismissed.

(Prabhat Kumar Singh, J.)

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