

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.11657 of 2021

Arising Out of PS. Case No.-210 Year-2011 Thana- MANER District- Patna

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1. KAMLESH KUMAR @ KAMLESH KUMAR GUPTA S/o Shyam Bihari Gupta Resident of Village-Goraiya Asthan, Police Station-Maner, District-Patna.
 2. Chandan Kumar @ Amit Kumar S/o Chhotelal Sah (Mukhiya) Resident of Village-Goraiya Asthan, Police Station-Maner, District-Patna.
 3. Sudhir Kumar S/o Ram Naresh Ram Resident of Village-Goraiya Asthan, Police Station-Maner, District-Patna.

... .. Petitioner/s

Versus

1. THE STATE OF BIHAR
2. Reena Devi W/o Late Ashok Kumar Resident of Village and P.O-Byapur, P.S.-Maner, District-Patna.

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Lakshmindra Kumar Yadav, Advocate
For the Opposite Party/s : Mr. APP.

CORAM: HONOURABLE MR. JUSTICE SUNIL KUMAR PANWAR
ORAL ORDER

3 07-07-2022 Heard learned counsel for the parties.

The present application under Section 482 of the Code of Criminal Procedure, 1973 (hereinafter referred to as ‘the Code’) challenging an order dated 20.04.2012, passed by the learned ACJM, Danapur in Maner P.S. Case No. 210/2011/G.R. No. 2240 of 2011, pending in the Court of learned ADJ-II, Danapur, District- Patna, whereby he has taken cognizance of the offence punishable under Section 304 of the Indian Penal Code and has issued summonses against five persons, including this petitioner.

It is the petitioner’s case that the police, after completion of investigation, have submitted police report and



though found incriminating materials against co-accused Rakesh Kumar Thakur, finding no such evidence against the present petitioner and other co-accused persons were not sent up for trial. The Court below, however, on perusal of the police report and other materials collected in course of investigation has, after taking cognizance, decided to proceed against this petitioner also by ordering for issuance of summonses.

Learned counsel appearing on behalf of the petitioner, assailing the impugned order has submitted that the impugned order does not disclose any application of mind while differing with the report of the police, to the extent the same relates to summoning the petitioner. According to him, the Court below in a very casual and cavalier manner has summoned this petitioner also by impugned order though there was absolutely no material available before him which could have warranted summoning of the petitioner.

He further submits that the Hon'ble Supreme Court in the case of **Sampat Singh Vs. State of Harayana** reported in **1993(2) PLJR (SC) 47** has observed that once a police report is submitted under Section 173 of the Code, a duty is enjoined upon the Court to scrupulously scrutinize the police report and the accompaniments by applying its judicial mind, either to



accept or reject the police report. He has submitted that since the learned Magistrate has failed to scrupulously scrutinize the police report, whereby the petitioner was not sent up for trial in the absence of any incriminating material collected in course of investigation, on perusal of the impugned order, I find substance in the submission made on behalf of the petitioner.

Basing upon the aforesaid order of Hon'ble Supreme Court, the co-ordinate Bench of this Court *vide* order dated 08.05.2019 passed in Cr. Misc. No. 10370 of 2015 has been pleased to set aside the matter and remanded the matter to the Court below to pass an order afresh on the police report to the extent same relates to summoning this petitioner. This court is also of the same view. Hence, the instant petition stands disposed of by way of setting aside the matter and remanding the same to the court below for passing an order afresh.

It is true that the Court below has recorded his perusal of the police report. He has however, not said any thing in his order as to what material were there against this petitioner and the present application could be taken by him by making an application at the stage of framing of charges. However, this impugned order, in my opinion, suffers from complete non-application of mind. The same is set aside, accordingly, the



matter is remanded back to the Court below to pass an order afresh on the police report to the extent same relates to summoning these petitioners.

This application is allowed accordingly with the observation as above.

(Sunil Kumar Panwar, J)

Brajesh Kumar/-

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