IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.22792 of 2023

Arising Out of PS. Case No.-421 Year-2022 Thana- SHRIKRISHNAPURI District- Patna

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ARUN KUMAR Son of Late Shri Rajendra Singh R/o Flat Nos. 205 and 206 of Nilgiri Bhawan, West Boring Canal Road, PS- S.K. Puri Dist- and Town- Patna

... ... Petitioner/s

Versus

1. The State of Bihar
2. Anjali Daughter of Anil Kumar Ratnesh Office address 4th Floor, Loknayak Jay Prakash Bhawan, Bandar Bagicha, Fraser Road, PS- Kotwali Dist and Town Patna 800001, Bihar

... ... Opposite Party/s

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Appearance :
For the Petitioner/s : Mr.Rana Vikram Singh
For the Opposite Party/s : Mr.Anil Kumar

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CORAM: HONOURABLE MR. JUSTICE SANDEEP KUMAR
ORAL JUDGMENT
Date : 08-05-2023

Heard the parties.

This application has been filed on behalf of the petitioner for quashing the FIR vide Shri Krishnapuri P.S. Case No. 421 of 2022 instituted for the offence under Sections 186/201/204/120-B of the Indian Penal Code.

That the prosecution case is based on a computer typed complaint written by one Anjali, Indian Revenue Service Officer (Assistant Commissioner of Income Tax) Income Tax Office, Patna and is addressed to the Station House Officer of Shri Krishnapuri Police Station, Patna, Bihar with the subject of lodging an FIR against the petitioner aged about 60 years under

Sections 186/201/204 read with Section 120-B of the Indian Penal Code in which the informant inter alia alleges that a search and seizure action under Section 132 of the Income Tax Act was in progress at the residential and office premises of the petitioner situated at flat Nos. 205 and 406 of Nilgiri Bhavan, West Boring Canal Road, Patna and when the flats were being searched in connection with the source and use of about Rs. 58 lakhs received by him which was not found during the search and the CCTV footage showed that this money was sent out of this petitioner's house by the petitioner and accordingly the informant alleged that there were some incriminating documents in connection with the transaction relating to this money with other persons and while the search was in progress and when the search party was busy in the proceedings, the petitioner fled from the scene with the important documents.

It is further alleged that the petitioner fled from the search premises with unknown persons with common intention in order to break the law and avoid the proceedings under the Income Tax Act. It is accordingly requested by the informant to institute an FIR against the petitioner for indulging in criminal conspiracy to obstruct public servants in discharge of their public function by disappearing the evidence which could have resulted into a strong evidence which may be used to establish a strong case of money laundering.

Based on the aforesaid Complaint of the informant, the Station House Officer of Shri Krishnapuri Police Station instituted SK Puri Police Station Case No. 421 of 2022.

Learned counsel for the petitioner submits that all the offences alleged in the FIR are non-cognizable offence and therefore, an FIR should not have been registered.

Learned counsel for the petitioner further submits that under Section 155 of the Code of Criminal Procedure, 1973 it is apparent that whenever an information is given to an officer-in-charge about the commission of a non-cognizable offence, the officer-in-charge has to enter the substance of information in a book and he has to refer the informant to the Magistrate.

Even under sub-Section 2 of Section 155, of the Cr.P.C. there is a specific provision that no Police officer will investigate a non-cognizable case without the order of a Magistrate having power to try such case or commit the case for trial.

Learned Counsel for the petitioner further submits that in the present case FIR was instituted without referring the informant to the learned Magistrate having jurisdiction over the subject matter and therefore there is complete violation of Section 155 (2) of the Cr.P.C.

Learned counsel for the petitioner has also relied upon the judgment of Hon'ble Madras High Court in the case of ***Hanifa Vs. State of Kerala 2022 LiveLaw (Ker), 638*** and has submitted that no investigation in a non-cognizable offence can be commenced without obtaining order of a Magistrate.

Learned counsel for the Income Tax Department Ms. Diksha Singh along with Shri Saurav Upadhyay, Assistant Director of Income Tax Department have appeared in this Court and have submitted that FIR has been registered by the police and now since the investigation has progressed the same cannot be quashed and for that they have relied upon the judgment of Hon'ble Rajasthan High Court in the case of ***Bansidhar Vs. State of Rajasthan AIR 1959 Raj 191.***

Learned APP for the State has also adopted the argument of the learned counsel for the Income Tax Department.

I have considered the submissions of learned counsel for the parties.

Section 155 of the Cr.P.C. reads as follows:-

> ***Information as to non-cognizable cases and investigation of such cases***--*(1) When information is given to an officer in charge of a police station of the*

commission within the limits of such station of a non-cognizable offence, he shall enter or cause to be entered the substance of the information is a book to be kept by such officer in such form as the State Government may prescribe in this behalf, and refer the informant to the Magistrate.

(2) No police officer shall investigate a non-cognizable case without the order of a Magistrate having power to try such case or commit the case for trial.

(3) Any police officer receiving such order may exercise the same powers in respect of the investigation (except the power to arrest without warrant) as an officer in charge of a police station may exercise in a cognizable case.

(4) Where a case relates to two or more offences of which at least one is cognizable, the case shall be deemed to be a cognizable case, notwithstanding that the other offences are non-cognizable.

From reading the Section 155 of the Cr.P.C. it is clear that no police officer shall investigate a non-cognizable offence without obtaining the order from a Magistrate who is having power to try such case or commit the case for trial.

In the present case, all the offences under which the FIR has been registered are non-cognizable offences as is apparent from the first schedule of the Cr.P.C. which deals with the classification of the offences.

There is nothing to show that any order of the learned Magistrate was obtained under Section 155-B Cr.P.C. for investigation in the non-cognizable offence and therefore the registration of an FIR of a non-cognizable offence is illegal.

Moreover, Para 8, 9, 14 and 15 of ***Hanifa Vs. State of Kerala(Supra)*** reads as follows:-

> ***8.*** *The statute through Section 155(2) Cr.P.C. stipulates that when information relates to a case indicative of non-cognizable offences, the police officer is interdicted from commencing the Investigation without an order from the Magistrate. The statute also mandates that such orders must be obtained from the Magistrate having the power to try the case or commit such a case for trial. The terms 'non-cognizable offence' and 'non-cognizable case' are defined in Section 2 (1) of Cr.P.C as an offence and as a case in which a police officer has no authority to arrest without a warrant*
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> ***9.*** *Section 155(2) of Cr.PC prohibits not only an investigation but even the commencement of an investigation by the police without orders from the Magistrate concerned in cases where only noncognizable offences are alleged. The legislative intent of categorizing offences into cognizable and*

non-cognizable with a fetter placed on the police officer from commencing an investigation into a non-cognizable offence without orders from the Magistrate has a purpose. The emphatic negative language employed in the section indicates that the legislative mandate cannot be disobeyed or ignored.

14. *In the decision in* ***Keshav Lal Thakur v. State of Bihar (1996) 11 SCC 557)*** *it was held that "On the own showing of the police, the offence under Section 31 of the Act is non cognizable and therefore the police could not have registered a case for such an offence under Section 154 Cr.P.C. Of course, the police is entitled to investigate into a non-cognizable offence pursuant to an order of a competent Magistrate under Section 155(2) Cr.P.C. but admittedly, no such order was passed in the instant case. That necessarily means that neither the police could investigate into the offence in question nor submit a report on which the question of taking cognizance could have arisen. While on this point, it may be mentioned that in view of the Explanation to Section 2(d) Cr.P.C., which defines 'complaint', the police is entitled to submit, after investigation, a report relating to a non-cognizable offence in which case such a report is to be treated as a* *'complaint' of the police officer concerned, but that explanation will not be available to the prosecution here as that relates to a case where the police initiates investigation into a cognizable offence unlike the present one-but ultimate finds that only a non-cognizable offence has been made out"*

15. *Relying upon the above decisions, this Court, in* ***Mehaboob's case (supra)****, held that in non-cognizable offences, registering an FIR, conducting the investigation, filing a final report, and taking cognizance without obtaining an order from the Magistrate are all illegal. In view of the principles laid down in* ***Keshav Lal Thakur's case (supra)*** *and* ***Mahaboob's case (supra)****, it is clear that when only non-cognizable offences are alleged initially, investigation cannot be commenced without orders from the Magistrate.*

From the above discussion it is clear that the present FIR has been registered for offences which are non-cognizable and the same could not have been registered and the investigation could not have began.

In view of the above discussions, this application is allowed.

Accordingly, the FIR vide Shri Krishnapuri P.S. Case

No. 421 of 2022 instituted for the offence under Sections 186/201/204/120-B of the Indian Penal Code is hereby quashed.

(Sandeep Kumar, J)

Vikas/-

AFR/NAFR	AFR
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