

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.21584 of 2016

Arising Out of PS. Case No.-149 Year-2014 Thana- RAXAUL District- East Champaran

Chandan Kumar S/o Gopal Mishra, R/o Mohalla- Naga Road, Ward No. 22,
P.s.- Raxaul, District- East Champaran

... .. Petitioner/s

Versus

1. State Of Bihar
2. Sri Anil Kumar Rungta S/o Sri Anant Kumar Rungta, R/o Mohalla- Marwari Gali, Naga Road, P.S.- Raxaul, District- East Champaran

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Pradeep Kumar Sinha, Advocate
For the Opposite Party/s : Mr.Sanjay Kr.Panday, APP

CORAM: HONOURABLE MR. JUSTICE CHANDRA SHEKHAR JHA
ORAL ORDER

9 01-04-2024 The present petition has been preferred under Section 482 CrPC for quashing the impugned order dated 20.08.2014 passed by learned S.D.J.M., Raxaul at Motihari in Raxaul PS Case No. 149/2014, whereby learned Magistrate has taken cognizance against the accused persons including the petitioner under Section 395 and 397 of the IPC.

2. The factual matrix as emerging from the record is that on a written report of informant, Anil Kumar Rungta, Raxaul PS Case No. 149/2014 was registered against three unknown persons for an offence punishable under Section 394 of the IPC. As per FIR, in the night of 18.06.2014 at about 10:30 PM, while the informant, after closing his shop along with



his accountant, namely, Pankaj Kumar Singh was on his way to his home having Rs. 6 Lacs cash along with some bills and other documents, they were intercepted by three unknown miscreants who looted away the cash from the informant and ran away. It is also alleged in the FIR that one of the miscreants had hit on the head of informant by means of iron rod causing injury to the informant.

3. Charge-sheet has been submitted and cognizance has been taken against all the accused persons including the petitioner. However, investigation is still pending in the matter.

4. Learned counsel for the petitioner submits that the petitioner has falsely been implicated in this case out of ulterior and oblique motive as he had raised his demand for his due salary. It is also submitted that the petitioner's employment in the shop of the informant is not in dispute rather it was supported by the brother of the informant during course of investigation. It is further submitted that the cognizance order in itself is bad because it did not assign any valid reason and on this score alone, the impugned order is liable to be set aside. It is further pointed that save and except confessional statement, nothing incriminating has come against the petitioner during investigation. Learned counsel submitted that the mobile in



issue which is alleged to be recovered from the possession of the petitioner, in fact, belongs to the petitioner. Where initially the FIR has been lodged only for offence under Section 394 of the IPC wherein it has clearly been stated that there were only three unknown miscreants who had attacked the informant and looted away his cash of Rs. 6 Lacs and other belongings. Therefore, cognizance taken under Sections 395 IPC appears to be bad in the eye of law. It is further submitted that though the present crime is a heinous offence but the cognizance should not have been taken in such a casual and mechanical manner.

5. Learned counsel for the petitioner, in support of his submission, has relied upon the judgment/order dated 19.05.2022 passed by the Hon'ble Delhi High Court in the case of *Sanjit Bakshi v. State of NCT of Delhi in Crl M.C. 4177/2019 & Crl M.A. 34234/2019* wherein *vide* paragraphs 8, 9 and 10, it has been held as follows:-

“8. In *R.R. Chari V State of Uttar Pradesh*, 951CriLJ 775 the question before the Supreme Court was as to when cognizance of the offence could be said to have been taken by the Magistrate under Section 190 of the Code. It was observed as under:-

It is clear from the wording of the section that the initiation of the proceedings against a person commences on the cognizance of the offence by the Magistrate under one of the three contingencies mentioned in the section. The first contingency evidently is in respect of non-cognizable offences as defined in the



Criminal Procedure Code on the complaint of an aggrieved person. The second is on a police report, which evidently is the case of a cognizable offence when the police have completed their investigation and come to the Magistrate for the issue of a process. The third is when the Magistrate himself takes notice of an offence and issues the process. It is important to remember that in respect of any cognizable offence, the police, at the initial stage when they are investigating the matter, can arrest a person without obtaining an order from the Magistrate. Under Section 167(b) of the Criminal Procedure Code the police have of course to put up the person so arrested before a Magistrate within 24 hours and obtain an order of remand to police custody for the purpose of further investigation, if they so desire. But they have the power to arrest a person for the purpose of investigation without approaching the Magistrate first. Therefore in cases of cognizable offence before proceedings are initiated and while the matter is under investigation by the police the suspected person is liable to be arrested by the police without an order by the Magistrate.

9. The Supreme Court in *Fakhruddin Ahmad V*

State of Uttaranchal, (2008) 17 SCC 157 also held as under:-

Nevertheless, it is well settled that before a Magistrate can be said to have taken cognizance of an offence, it is imperative that he must have taken notice of the accusations and applied his mind to the allegations made in the complaint or in the police report or the information received from a source other than a police report, as the case may be, and the material filed therewith. It needs little emphasis that it is only when the Magistrate applies his mind and is satisfied that the allegations, if proved, would constitute an offence and decides to initiate proceedings against the alleged



offender, that it can be positively stated that he has taken cognizance of the offence. Cognizance is in regard to the offence and not the offender.

10. The Supreme Court also observed in ***S.K. Sinha, Chief Enforcement Officer V Videocon International Ltd., (2008) 2 SCC 492*** held as under:-

The expression 'cognizance' has not been defined in the Code. But the word (cognizance) is of indefinite import. It has no esoteric or mystic significance in criminal law. It merely means 'become aware of and when used with reference to Court or a Judge, it connotes to take notice of judicially'. It indicates the point when a Court or a Magistrate takes judicial notice of an offence with a view to initiating proceedings in respect of such offence said to have been committed by someone.

"Taking cognizance' does not involve any formal action of any kind. It occurs as soon as a Magistrate applies his mind to the suspected commission of an offence. Cognizance is taken prior to commencement of criminal proceedings. Taking of cognizance is thus a sine qua non or condition precedent for a valid trial. Cognizance is taken of an offence and not of an offender. Whether or not a Magistrate has taken cognizance of an offence on the facts and circumstances each case and no rule of universal application can be laid down as to when a Magistrate can be said to have taken cognizance."

6. *Per contra* Ld. APP for the State while opposing the prayer of the petitioner defends the impugned order submitting that the petitioner was found in conversation with other two accused persons, namely, Chandan Das and Jai Kishan



before and after the alleged occurrence. It would be appropriate to reproduce the impugned order of cognizance which reads as follows:-

“20.08.2014. Charge sheet along with case-diary has been submitted by the police.

On perusal of the FIR., charge sheet and entire evidence gathered by the police in case diary this court is of the opinion that there is sufficient material available in the case diary for a prima facie case U/S-395,397 of IPC against all accused persons noted in coll No. 11 of Charge Sheet and accordingly, cognizance is taken.

Investigation is still pending. Split up the case record.

Case record is kept in personal file for taking further steps in accordance with law.

Issue P/W against custody accused persons for production from jail fixing 03.09.2014.

7. In view of the aforesaid factual and legal discussions, it appears that the impugned order dated 20.08.2014 is cryptic, non-speaking and was passed without application of judicial mind. Accordingly, the impugned order dated 20.08.2014 is set aside and the learned trial court is directed to pass a fresh and speaking order after considering the material available on record, particularly, on the point of Section 395 of the IPC.

8. The petition stands allowed in the aforesaid terms.



9. A copy of this order be sent immediately to learned Additional Sessions Judge-14/Incharge Court, Motihari for necessary compliance as directed aforesaid.

(Chandra Shekhar Jha, J)

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