

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.37503 of 2016

Arising Out of PS. Case No.-260 Year-2011 Thana- PATNA COMPLAINT CASE District-
Patna

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Dineshwar Rai Son of Late Brahmdeo Rai Resident of Village- Gonwan, P.S.-
Naubatpur, District- Patna.

... .. Petitioner/s

Versus

The State Of Bihar

... .. Opposite Party/s

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Appearance :

For the Petitioner/s	:	Mr. Prem Ranjan Kumar, Advocate Mr. Braj Bhushan Mishra, Advocate
For the State	:	Mr. Upendra Kumar, APP

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CORAM: HONOURABLE MR. JUSTICE JITENDRA KUMAR
ORAL ORDER

7 13-12-2024 The present petition under Section 482 Cr.PC has been preferred by the petitioner against the impugned order dated 10.04.2015, passed by Sri Kumar Madhvendra, learned Judicial Magistrate, Danapur in Complaint Case No. 260(C) of 2011, whereby learned Magistrate has refused to convert the summons trial of the accused into warrant trial, who is alleged to have committed the offence punishable under Section 417 of the Indian Penal Code.

2. The relevant facts, shorn of unnecessary details, are that the complaint case bearing no. 14(C) of 2010 was lodged by the complainant before learned A.C.J.M., Danapur on 05.01.2010. On the basis of the said complaint, learned Magistrate directed the police to lodge FIR and investigate the



matter. Consequently, the police instituted Naubatpur P.S. Case No. 126 of 2010 for offence punishable under Sections 440 and 406 of the Indian Penal Code.

3. However, after investigation, final form was submitted by the police stating that the alleged facts and circumstances constitute a dispute of civil nature and not an offence. Subsequently, protest petition was filed by the complainant which was registered as Complaint Case No. 260(C) of 2011. After inquiry in the protest petition, cognizance of offence punishable under Section 417 of IPC was taken and summons trial was started by learned Magistrate. The accusation was explained to the accused persons on 03.10.2012 and altogether seven witnesses were examined. Hence, the complainant moved an application under Section 259 Cr.PC for converting the summons trial into a warrant trial stating that all witnesses have supported the statements made in the complaint petition as per which offence punishable under Sections 420, 440, 447, 467, 468, 380, 506 and 120B of the Indian Penal Code are made out which are warrant triable offences. However, learned Magistrate has dismissed the application by the impugned order and refused to convert the summons trial into warrant trial.



4. I heard learned counsel for the petitioner and learned APP for the State.

5. Learned counsel for the petitioner submits that as per the depositions made by the prosecution witnesses during trial, warrant triable offences are made out and hence, learned Magistrate should have allowed the petition and converted the summons trial into a warrant trial.

6. However, learned APP for the State defends the impugned order submitting that there is no illegality or infirmity in it. To substantiate his submission, he submits that the offence punishable under Section 417 of the Indian Penal Code is a summons triable and no case is made out to convert the summons trial into warrant trial.

7. He further submits that as per Section 259 Cr.PC, it is discretionary power of learned Magistrate to convert the summons trial into warrant trial as per the nature of the offence and the evidence and the prosecution or the accused has no vested right for conversion of summons trial into a warrant trial. It is pure discretionary power of the Magistrate. He further submits that in the case on hand, the accusation was explained under Section 417 of the Indian Penal Code, which is a summons triable offence and hence, there is no illegality or



infirmity in the impugned order and the present petition is liable to be dismissed.

8. I considered the submissions advanced by both the parties and perused the materials on record.

9. In view of the rival submissions of the parties, it would be appropriate to refer to Section 259 Cr.PC to proceed further. Section 259 of Cr.PC reads as follows:-

“259. Power of Court to convert summons-cases into warrant cases.- When in the course of the trial of a summons-case relating to an offence punishable with imprisonment for a term exceeding six months, it appears to the Magistrate that in the interests of justice, the offence should be tried in accordance with the procedure for the trial of warrant-cases, such Magistrate may proceed to rehear the case in the manner provided by this Code for the trial of warrant-cases and may recall any witness who may have been examined.”

10. I find that the statutory provisions of Section 259 Cr.PC clearly show that under Section 259 Cr.PC, legislature has given discretionary power to learned Magistrate to convert the summons trial into warrant trial, if learned Magistrate, in course of trial, is of the opinion that conversion of the summons trial into warrant trial is required in the interest of justice in view of the nature of the offence and the evidence of the case. However, no party has been given any vested right to ask for particular procedure to be adopted in the trial. Hon’ble Supreme Court in **Rao Shiv Bahadur Singh and Anr. Vs. State of Vindhya Pradesh, (1953) 2 SCC 111**, has clearly held that the



accused has no right to be tried by a particular Court or by particular procedure except insofar as there is any constitutional objection by way of discrimination or the violation of any other fundamental right is involved. The same principle has been reiterated by Hon'ble Supreme Court in **Union of India Vs. Sukumar Pyne, 1966 Cri. L.J. 946.**

11. I further find that for conversion of summons trial into a warrant trial, the only relevant consideration for the learned Magistrate is the nature of the offence and the evidence of the case. If learned Magistrate is satisfied, in view of the nature of the offence and the evidence that warrant trial is required in the interest of justice, he is empowered to convert the summons trial into a warrant trial at any stage of the trial.

12. However, in the case on hand, I find that there is no such case of the petitioner/complainant that in view of the nature of the offence and the evidence, the summons trial should be converted into warrant trial. His grievance appears to be something else. As per the facts and circumstances, it appears that the petitioner/complainant wants the trial of the accused persons not only for the offence punishable under Section 417 of the IPC, but even for offences punishable under Sections 420, 440, 447, 467, 468, 380, 506 and 120B of the Indian Penal in



view of the averment of the complainant and deposition of the witnesses in trial. But he has not challenged the cognizance order, whereas he should have moved higher Court for taking cognizance of offence punishable under Sections 420, 440, 447, 467, 468, 380, 506 and 120B of the Indian Penal Code also. But he has not resorted to such remedy and wrongly filed the application under Section 259 Cr.PC for conversion of summons trial into warrant trial. Unless the cognizance is taken of warrant triable offence or the Magistrate is satisfied as per the nature of the offence and the evidence of the case in trial case, learned Magistrate cannot resort to procedure provided for warrant triable cases.

13. Hence, I find no illegality or infirmity in the impugned order and the present petition is liable to be dismissed for want of any merit or substance. Accordingly, the present petition is dismissed.

(Jitendra Kumar, J)

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