

Manoranjan Singh and anr. Vs. the State of Bihar and anr.

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SooperKanoon Citation : sooperkanoon.com/140796

Court : Patna

Decided On : Sep-27-2007

Judge : Mihir Kumar Jha, J.

Appellant : Manoranjan Singh and anr.

Respondent : The State of Bihar and anr.

Judgement :

Mihir Kumar Jha, J.

1. In this case, by order dated 08.11.1996, notices were ordered to be issued on the Complainant (Opposite Party No. 2). The Opposite Party No. 2, however, despite service of notice, has not chosen to appear in this case.

2. This application is directed against the order, dated 10.07.2006 whereby and whereunder the Judicial Magistrate, Patna City in Fatuha P.S. Case No. 258 of 2004 has rejected the prayer of the petitioner for their discharge as envisaged power to exercise under Section 239 of the Code of Criminal Procedure.

3. Counsel for the petitioner has made a very short submission inasmuch as it is contended that a petition setting out the materials and grounds seeking the relief of discharge was filed before the Court below but from the impugned order, it would transpire that the same has been rejected mechanically without application of mind. In this regard, it has been contended that there are materials to show that

from the joint bank account of Kedar Roy and Manti Devi (Opposite Party No. 2), the victim Kedar Roy had withdrawn amount on several dates. It is, thus, contended that if this be correct, then the allegation of abduction and other offences can not be made out against the petitioners and, therefore, the charge could not have been framed against them for offences under Section 365 of the Indian Penal Code and/or even under other offences such as under Sections 406, 420 and 120B of the Indian Penal Code.

4. On a bare perusal of the impugned order, I am satisfied that the Court below has made a mess of judicial procedure. The Court below was required to at least examine the facts as stated in the application seeking discharge. It was also required to briefly mention the materials collected by the Police in course of investigation with reference to the case diary. An objective consideration followed by a reasoned order is the minimum requirement in any judicial proceeding. The petition for discharge could not have been simply rejected by the Court in a routine and mechanical manner by stating that since the Magistrate has taken cognizance for offences under Sections 406, 420, 365 and 120B of the Indian Penal code or that in the case diary, there are sufficient evidence for framing of charge, the application seeking discharge can not be allowed. Such mechanical disposal of the application seeking discharge can not be countenanced in law especially when such order of the court below has to be examined by the superior court.

5. Consequently, the impugned order dated 10.07.2006 being a totally mechanical, non-speaking and infact a perverse order is hereby set aside and the matter is remitted back to the Court below for examining the matter afresh and passing a reasoned order in accordance with law.