

Moti Sao Vs. State

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Court : Jharkhand

Decided On : May-09-2001

Reported in : 2001(49)BLJR1792

Judge : Deoki Nandan Prasad, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 161, 207, 397 and 401; [Indian Penal Code \(IPC\), 1860](#) - Sections 120-B, 419, 420 and 468

Appeal No. : Cri. Revision No. 60 of 1995 (R)

Appellant : Moti Sao

Respondent : State

Advocate for Def. : A.K. Sinha, APP

Advocate for Pet/Ap. : Y.N. Mishra, Adv.

Disposition : Revision allowed

Judgement :

Deoki Nandan Prasad, J.

1. This application under Sections 397/401 of the Code of Criminal Procedure had been filed by the sole-petitioner challenging the order dated 16.5.1995 passed by the Judicial Magistrate. 1st Class, Bokaro at Chas in G.R. Case No. 120/B/35.

whereby and whereunder the learned Magistrate passed order to proceed with the case after framing of charge, though the copy of the police paper was not supplied as required under Section 207, Cr PC.

2. This case was registered under Sections 419/420/468 and 120B of the Indian Penal Code and there is an allegation that the accused used-person impersonated the name of the complainant with the help of one fake person and got the appointment of khalashi.

3. The learned counsel appearing on behalf of the petitioner submitted, at the very outset, that the mandatory provision of Section 207 of the Code of Criminal Procedure has not been complied with by the trial Court as no copy of the police paper was supplied and as such the order for framing charge against the petitioner is illegal and fit to be set aside.

4. On the other hand, the learned APP contended before me that actually the case diary is not available with the learned APP as it is missing. But. the learned Magistrate already directed the petitioner and others to inspect the record personally or through pleader and the case will proceed on the basis of the material present in the record and this case is pending since 1984.

5. No doubt, the provisions of Section 207. Cr PC for supply of the police paper is mandatory and it is also incumbent upon the learned Magistrate to supply the police paper and also the copy of the witnesses recorded under Section 161. Cr PC but the case diary is admittedly missing and not available with the learned APP. The learned APP also fairly conceded before the Court below that the case may be proceeded on the basis of the materials whatever available on the record.

6. There appears that the case is pending since long and as such the learned Magistrate (trial Court) is directed to obtain the carbon copy of the case diary from the Superintendent of Police, Bokaro by taking proper steps without further delay. However. if the carbon copy of the case diary is not available, the learned Magistrate is further directed to proceed with the case and dispose of the same in accordance with law after supplying the copy of the record/papers available on the record itself. Moreover, the defence will also get sufficient opportunity to cross-

examine on that score.

7. In the result, the revision is allowed and the order dated 16,5.1995 is set aside.

Let the records of the trial Court be sent down forthwith, so that the trial may be expedited without further delay.

8. Revision allowed.

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