

Hare Krishna Roy. Vs. State of Bihar.

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Court : Patna

Decided On : Oct-06-2010

Judge : Rakesh Kumar, J.

Acts : Code of Criminal Procedure (CrPC) - Section 482; Indian Penal Code (IPC) - Sections 467, 468, 471, 419, 420

Appeal No. : CRIMINAL MISCELLANEOUS No.35891 OF 2002

Appellant : Hare Krishna Roy.

Respondent : State of Bihar.

Advocate for Def. : Mr. Shivesh Chandra Mishra, Adv.

Advocate for Pet/Ap. : M/S Yogesh Chandra Verma; Surya Narayan Roy, Adv.

Judgement :

1. The sole petitioner, while invoking inherent jurisdiction of this Court under Section 482 of the Code of Criminal Procedure, has prayed for quashing of an order dated 3.10.2002 passed by Shri V.N. Singh, Judicial Magistrate, Saharsa in Saharsa P.S. Case No.97 of 2002, G.R. No.529 of 2002. By the said order, the learned Magistrate has taken cognizance of offence under Sections 467, 468, 471, 419 and 420 of the Indian Penal Code.

2. Short fact of the case is that opposite party no.2 filed a written report before the Officer-in-charge of Saharsa Sadar Police Station alleging therein that one

Pradeep Kumar Moitra along with others had cheated the complainant and many other persons on the ground of providing employment to the un-employed persons. For the purpose of giving employment by committing fraud, the accused Pradeep Kumar Moitra had collected huge amount from number of candidates and subsequently, it transpired that the complainant was cheated by the accused Pradeep Kumar Moitra in conspiracy with other accused persons. The F.I.R. was registered against Pradeep Kumar Moitra and others. However, name of other accused persons was not mentioned in the accused column of the F.I.R. After investigation, police submitted charge sheet only against Pradeep Kumar Moitra. After submission of charge sheet, the learned Magistrate besides taking cognizance of offence against Pradeep Kumar Moitra also took cognizance of offence against this petitioner for the offence under Sections 467, 468, 471, 419 and 420 of the Indian Penal Code by its order dated 3.10.2010.

3. Aggrieved with the order of cognizance, the petitioner approached this Court by filing the present petition.

4. Shri Yogesh Chandra Verma, learned Senior Counsel appearing on behalf of the petitioner, has submitted that the learned Magistrate was not competent to take cognizance of the offence against the petitioner, keeping in view the fact that in the police report, the name of the petitioner was not mentioned in the accused column nor the petitioner was F.I.R. named accused. It has been submitted that the learned Magistrate was not authorized to take cognizance for the offence against the petitioner and only on this very ground, it has been prayed to set aside the order of impugned cognizance.

5. In this case, by order dated 10.10.2006, case diary of Saharsa P.S. Case No.97 of 2002 was called for and same has been received, which is lying with the record of the same.

6. Shri Shivesh Chandra Mishra, learned Additional Public Prosecutor appearing on behalf of the State, while opposing the prayer of the petitioner, has submitted that of course in the accused column, name of petitioner has not been specifically mentioned, but in the contents of the first information report, there is specific averment disclosing commission of offences by the petitioner also. Learned

counsel for the State, while referring to number of paragraphs of the case diary, has submitted that even during investigation, it has come that petitioner was in deep conspiracy with the main accused i.e. Pradeep Kumar Moitra. Learned counsel for the State has stated that even in the F.I.R., there is specific averment against the petitioner and during investigation also, the allegation was corroborated. Accordingly, it has been prayed to reject the present petition.

7. Besides hearing learned counsel for the parties, I have also perused the copy of F.I.R., which has been enclosed as Annexure-1 to the petition as well as the impugned order. In view the fact that there is specific assertion against the petitioner even in the F.I.R., I do not think, while taking cognizance of offence, learned Magistrate has committed any error. At this stage, it would not appropriate for this Court to examine materials meticulously or in detail. Matter is left open to be examined at appropriate stage by the court below.

8. Accordingly, the petition stands rejected.

9. In view of rejection of this petition, interim order of stay stands automatically vacated.

10. Let a copy of this order be sent to the court below forthwith.

11. Office is directed to remit back the original case diary, which is lying with the record of the present case.

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