

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.9070 of 2019

Arising Out of PS. Case No.-795 Year-2016 Thana- PATNA COMPLAINT CASE District-
Patna

Jagat Shankar Prakash @ Jagat Shankar Prasad @ Jagat Shankar Son of Late Madan Mohan Prasad Resident of Chitragupta Nagar, Police Station- Patrakar Nagar, District- Patna.

... .. Petitioner/s

Versus

1. The State of Bihar
2. Kashmiri Devi Wife of Dinanath Sah Resident of Village- Akhtiyarpur, Police Station-Bihta, District- Patna.

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Manoj Kumar, Advocate

For the Opposite Party/s : Mr. Kumar Veerendra Narayan, APP

CORAM: HONOURABLE MR. JUSTICE PURNENDU SINGH
ORAL JUDGMENT

Date : 24-11-2025

Heard Mr. Manoj Kumar, learned counsel appearing on behalf of the petitioner and Mr. Kumar Veerendra Narayan , learned APP for the State.

2. The petitioner has preferred the application under Section 482 Cr.P.C. for quashing of the order dated 29.11.2017 passed in connection with Complaint Case No.795(C) of 2016 by the learned Additional Chief Judicial Magistrate, Danapur, Patna whereby cognizance of offence has been taken under Sections 323, 341, 504, 354A of the Indian Penal Code against the petitioner.

3. Learned counsel appearing on behalf of petitioner submitted that Complaint Case No.795(C) of 2016 was filed making petitioner as accused under Sections 323, 341,



504, 354A of the Indian Penal Code and cognizance of the offence was taken on 29.11.2017. The petitioner was produced before the Court after having summon served on 24.10.2017 and in most mechanical manner without following the procedure prescribed under section 244 of the Cr.P.C. The Magistrate proceeded to continue with the trial for the offence under the above Sections. Learned counsel submitted that the Section 244 of the Cr.P.C. prescribes for fixing date and giving opportunity to the petitioner before framing of the charge and automatically framing charge is deprecated. Learned counsel submitted that though there is procedural lapses but the same has affected the vital right of the petitioner as prescribed under the Code of Criminal Procedure. On these grounds, the learned counsel seeks interference with the order dated 29.11.2017.

4. Referring to the law laid down by the Apex Court in case of *Vikram Johar Vs the State of Uttar Pradesh & Anr. in Cr. Appeal No.759 of 2019 (arising out of SLP (Crl.) No.4820 of 2017)*, he submitted that in absence of any ingredient under Section 504 of Indian Penal Code, further proceeding will be only vexatious in the peculiar facts and circumstances of the case and therefore seeks quashing of the cognizance order dated 29.11.2017 passed in connection with



Complaint Case No.795(C) of 2016 and the entire proceeding pending against the petitioner.

5. *Per contra*, learned APP appearing on behalf of the State submitted that the petitioner was given sufficient opportunity and he has not filed any application as already cognizance of offence has been taken under Sections 323, 341, 504, 354A of the Indian Penal Code against the petitioner. Having ignored his rights, the order dated 29.11.2017 cannot be said to be having not followed the required procedure and opportunity has not been given to the petitioner. On these grounds, learned APP submitted that the present application is fit to be dismissed without interfering with the order.

6. Heard the parties.

7. Having considered the rival submissions, it appears that cognizance has been taken under Section 504 of the Indian Penal Code against the petitioner. In this regard, I find it apt to refer the law laid down by the Apex Court in case of ***Vikram Johar (supra)***, particularly, on para 23 and 26 which are *inter-alia* reproduced here-in-after:

"23. In paragraph No.13 of the judgment, this Court has noticed the ingredients of Section 504, which are to the following effect:-

"13. Section 504 IPC comprises of the following ingredients viz. (a) intentional insult, (b) the insult must be such as to give provocation to the person insulted, and (c) the accused must intend or know that



such provocation would cause another to break the public peace or to commit any other offence. The intentional insult must be of such a degree that should provoke a person to break the public peace or commit any other offence. The person who intentionally insults intending or knowing it a to to be likely that it will give provocation to any other person and such provocation will cause to break the public peace or to commit any other offence, in such situation, the ingredients of Section 504 are satisfied. One of the essential elements constituting the offence is that there should have been an act or conduct amounting to intentional insult and the mere fact that the accused abused the complainant, as such, is not sufficient by warrant a conviction under to itself Section 504 IPC."

26. Now, we revert back to the allegations in the complaint against the appellant. The allegation is that appellant with two or three other unknown persons, one of whom was holding a revolver, came to the complainant's house and abused him in filthy language and attempted to assault him and when some neighbours arrived there the appellant and the other persons accompanying him fled the spot. The above allegation taking on its face value does not satisfy the ingredients of Sections 504 and 506 as has been enumerated by this Court in the above two judgments. The intentional insult must be of such a degree that should provoke a person to break the public peace or to commit any other offence. The mere allegation that appellant came and abused the complainant does not satisfy the ingredients as laid down in paragraph No.13 of the judgment of this Court in **Fiona Shrikhande (supra)**."

8. The question which falls for consideration in the present application is, as to whether, there has been any infraction of the procedure prescribed under Sections 244 Cr.P.C. I find it apt to reproduce the Sections 238-250 Cr.P.C. , which is as under:

“238. Compliance with section 207.- When in any warrant-case instituted on a police report, the accused appears or is brought before a Magistrate at the commencement of the trial, the Magistrate shall satisfy himself that he has complied with the provisions of section 207.



239. When accused shall be discharged. - *If, upon considering the police report and the documents sent with it under Section 173 and making such examination, if any, of the accused as the Magistrate thinks necessary and after giving the prosecution and the accused an opportunity of being heard, the Magistrate considers the charge against the accused to be groundless, he shall discharge the accused, and record his reasons for so doing.*

240. Framing of charge. (1) *If, upon such consideration, examination, if Chapter, that the accused has committed an offence triable under this presume which such Magistrate is competent to try and which, in his opinion, could be adequately punished by him, he shall frame in writing a charge against the accused.*

(2) *The charge shall then be read and explained to the accused, and he shall be asked whether he pleads guilty of the offence charged or claims to be tried.*

241. Conviction on plea of guilty. *If the accused pleads guilty, the Magistrate shall record the plea and may, in his discretion, convict him thereon.*

242. Evidence for prosecution.

(1) *If the accused refuses to plead, or does not plead, or claims to be tried or the Magistrate does not convict the accused under Section 241, the Magistrate shall fix a date for the examination of witnesses.*

[Provided that the Magistrate shall supply in advance to the accused, the statement of witnesses recorded during investigation by the police.] [Inserted by the Code of Criminal Procedure (Amendment) Act, 2008 (5 of 2009), Section 19.]

(2) *The Magistrate may, on the application of the prosecution, issue a summons to any of its witnesses directing him to attend or to produce any document or other thing.*

(3) *On the date so fixed, the Magistrate shall proceed to take all such evidence as may be produced in support of the prosecution :Provided that the Magistrate may permit the cross-examination of any witness to be deferred until any other witness or witnesses have been examined or recall any witness for further cross-examination.*

243. Evidence for defence.-(1) *The accused*



shall then be called upon to enter upon his defence and produce his evidence; and if the accused puts in any written statement, the Magistrate shall file it with the record.

(2) If the accused, after he has entered upon his defence, applies to the Magistrate to issue any process for compelling the attendance of any witness for the purpose of examination or cross-examination, or the production of he considers that such application should be refused on the ground that it is any document or other thing, the Magistrate shall issue such process unless made for the purpose of vexation or delay or for defeating the ends of justice and such ground shall be recorded by him in writing:

Provided that when the accused has cross-examined or had the opportunity of cross-examining any witness before entering on his defence, the attendance of such witness shall not be compelled under this section, unless the Magistrate is satisfied that it is necessary for the ends of justice.

(3) The Magistrate may, before summoning any witness on an application under sub-section (2), require that the reasonable expenses incurred by the witness in attending for the purposes of the trial be deposited in Court.

B.-Cases instituted otherwise than on police report

244. Evidence for prosecution.-*(1) When, in any warrant-case instituted otherwise than on a police report, the accused appears or is brought before a Magistrate, the Magistrate shall proceed to hear the prosecution and take all such evidence as may be produced in support of the prosecution.*

(2) The Magistrate may, on the application of the prosecution, issue a summons to any of its witnesses directing him to attend or to produce any document or other thing.

245. When accused shall be discharged.-*(1) If, upon taking all the evidence referred to in section 244, the Magistrate considers, for reasons to be recorded, that no case against the accused has been made out which, if unrebutted, would warrant his conviction, the Magistrate shall discharge him.*

(2) Nothing in this section shall be deemed to prevent a Magistrate from discharging the accused at any previous stage of the case if, for reasons to be recorded by such Magistrate, he considers the charge to be groundless.



WEST BENGAL.- After sub-section (2) of the Section 245 insert the following sub-section namely :-

"(3) If the evidence referred to in Section 244 are not produced in support of the prosecution within four years from the date of appearance of the accused, the Magistrate shall discharge the accused unless the prosecution satisfies the Magistrate that upon the evidence already produced and for special reasons there is ground for presuming that it shall not be in the interest of justice to discharge the accused."

[W.B. Act 24 of 1988, Section 2]

246. Procedure where accused is not discharged.

(1) If, when such evidence has been taken, or at any previous stage of the case, the Magistrate is of opinion that there is ground for presuming that the accused has committed an offence triable under this Chapter, which such Magistrate is competent to try and which, in his opinion, could be adequately punished by him, he shall frame in writing a charge against the accused.

(2) The charge shall then be read and explained to the accused, and he shall be asked whether he pleads guilty or has any defence to make.

(3) If the accused pleads guilty, the Magistrate shall record the plea, and may, in his discretion, convict him thereon.

(4) If the accused refuses to plead, or does not plead or claims to be tried or if the accused is not convicted under sub-section (3), he shall be required to state, at the commencement of the next hearing of the case, or, if the Magistrate for reasons to be recorded in writing so thinks fit, forthwith, whether he wishes to cross-examine any, and, if so, which, of the witnesses for the prosecution whose evidence has been taken.

(5) If he says he does so wish, the witnesses named by him shall be recalled and, after cross-examination and re-examination (if any), they shall be discharged.

(6) The evidence of any remaining witnesses for the prosecution shall next be taken, and after cross-examination and re-examination (if any), they shall also be discharged.

247. Evidence for defence.- *The accused shall then be called upon to enter upon his defence and produce his evidence; and the provisions of Section 243 shall apply to the case.*

C - Conclusion of trial

248. Acquittal or conviction.

(1) If, in any case under this Chapter in which a charge has been framed, the Magistrate finds the accused not guilty, he shall record an order of acquittal. (2) Where, in any case under this



Chapter, the Magistrate finds the accused guilty, but does not proceed in accordance with the provisions of Section 325 or Section 360, he shall, after hearing the accused on the question of sentence, pass sentence upon him according to law. (3) Where, in any case under this Chapter, a previous conviction is charged under the provisions of sub-section (7) of Section 211 and the accused does not admit that he has been previously convicted as alleged in the charge, the Magistrate may, after he has convicted the said accused, take evidence in respect of the alleged previous conviction, and shall record a finding thereon : Provided that no such charge shall be read out by the Magistrate nor shall the accused be asked to plead thereto nor shall the previous conviction be referred to by the prosecution or in any evidence adduced by it, unless and until the accused has been convicted under sub-section (2).

249. Absence of complainant.- When the proceedings have been instituted upon complaint, and on any day fixed for the hearing of the case, the complainant is absent, and the offence may be lawfully compounded or is not a cognisable offence, the Magistrate may, in his discretion, notwithstanding anything herein above contained, at any time before the charge has been framed, discharge the accused. 250. Compensation for accusation without reasonable cause.

(1) If, in any case instituted upon complaint or upon information given to a police officer or to a Magistrate, one or more persons is or are accused before a Magistrate of any offence triable by a Magistrate, and the Magistrate by whom the case is heard discharges or acquits all or any of the accused, and is of opinion that there was no reasonable ground for making the accusation against them or any of them, the Magistrate may, by his order of discharge or acquittal, if the person upon whose complaint or information the accusation was made is present, call upon him forthwith, to show cause why he should not pay compensation to such accused or to each or any of such accused when there are more than one; or, if such person is not present, direct the issue of a summons to him to appear and show cause as aforesaid.

(2) The Magistrate shall record and consider any cause which such complainant or informant may show, and if he is satisfied that there was no reasonable ground for making the accusation, may, for reasons to be recorded, make an order that compensation to such amount, not exceeding the amount of fine he is empowered to impose, as he may determine, be paid by such complainant



or informant to the accused or to each or any of them.

(3)The Magistrate may, by the order directing payment of the compensation under sub-section (2), further order that, in default of payment, the person ordered to pay such compensation shall undergo simple imprisonment for a period not exceeding thirty days.

(4)When any person is imprisoned under sub-section (3), the provisions of Sections 68 and 69 of the Indian Penal Code (45 of 1860) shall, so far as may be, apply.

(5)No person who has been directed to pay compensation under this section shall, by reason of such order, be exempted from any civil or criminal liability in respect of the complaint made or information given by him :Provided that any amount paid to an accused person under this section shall be taken into account in awarding compensation to such person in any subsequent civil suit relating to the same matter.

(6)A complainant or informant who has been ordered under sub-section (2) by a Magistrate of the second class to pay compensation exceeding one hundred rupees, may appeal from the order, as if such complainant or informant had been convicted on a trial held by such Magistrate.

(7)When an order for payment of compensation to an accused person is made in a case which is subject to appeal under sub-section (6), the compensation shall not be paid to him before the period allowed for the presentation of the appeal has elapsed, or, if an appeal is presented, before the appeal has been decided; and where such order is made in a case which is not so subject to appeal the compensation shall not be paid before the expiration of one month from the date of the order.

(8)The provisions of this section apply to summons-cases as well as to warrant-cases."

9. From the records, it appears that the cognizance was taken on 29.09.2016 and date was fixed for examination on 24.10.2017. The Petitioner was arrested and produced before the court and even before he was given an opportunity to produce any evidence in his favour or before examining any witnesses, the learned Magistrate *vide* order dated 29.11.2017 framed the



charges under Sections 323, 341, 504, 354A of the Indian Penal Code against the petitioner.

10. Further, the Apex court in case of **T. Nagappa v. Y.R. Muralidhar**, reported in, **(2008) 5 SCC 633**, in paragraph no. 8 has held as under:

8. *An accused has a right to fair trial. He has a right to defend himself as a part of his human as also fundamental right as enshrined under Article 21 of the Constitution of India. The right to defend oneself and for that purpose to adduce evidence is recognised by Parliament in terms of sub-section (2) of Section 243 of the Code of Criminal Procedure, which reads as under:*

“243. Evidence for defence.—

*(1)****

(2) If the accused, after he has entered upon his defence, applies to the Magistrate to issue any process for compelling the attendance of any witness for the purpose of examination or cross-examination, or the production of any document or other thing, the Magistrate shall issue such process unless he considers that such application should be refused on the ground that it is made for the purpose of vexation or delay or for defeating the ends of justice and such ground shall be recorded by him in writing:

Provided that, when the accused has cross-examined or had the opportunity of cross-examining any witness before entering on his defence, the attendance of such witness shall not be compelled under this section, unless the Magistrate is satisfied that it is necessary for the ends of justice.”

11. Section 245 of Cr.P.C. prescribes the conditions on which, any accused shall be discharged. It states that, the accused can be discharged if the learned Magistrate is satisfied



that the charges leveled against the petitioner is groundless. Section 247 of Cr.P.C. prescribes the procedure when accused is not discharged. In the present case, I find that, the learned Magistrate, in accordance with Section 243 Cr.P.C, was required to give opportunity to the accused petitioner to enter his defence, which he had not provided and accordingly, the order passed in exercise of Section 244 Cr.P.C., on the basis of prosecution evidence is therefore required to be interfered with and the same is hereby *quashed and set-aside and quashed.*

12. It is observed that the police, at the stage of filing of chargesheet, and the criminal court, at the stage of framing of charges, must act as initial filters ensuring that only cases with a strong suspicion should proceed to the formal trial stage to maintain the efficiency and integrity of the judicial system.

13. Accordingly, the present application stands disposed of with a liberty to the petitioner to avail remedy at appropriate stage.

(Purnendu Singh, J)

Ashishsingh/-

AFR/NAFR	AFR
CAV DATE	NA
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